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CENTENNIAL CELEBRATION

OF THE

Supreme Court of North Carolina

1819—1919

BY THE

North Carolina Bar Association

HELD IN THE

SUPREME COURT ROOM

RALEIGH

JANUARY 4, 1919

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JOHN LOUIS TAYLOR
Chief Justice



LEONARD HENDERSON
Judge



JOHN HALL
Judge

NORTH CAROLINA SUPREME COURT

A. D. 1819

JUDGES AND OFFICERS OF THE SUPREME COURT OF
NORTH CAROLINA, 1819

CHIEF JUSTICE:

HON. JOHN LOUIS TAYLOR.

ASSOCIATE JUSTICES:

JOHN HALL, ESQ.

LEONARD HENDERSON, ESQ.

ATTORNEY-GENERAL:

WILLIAM DREW.

CLERK:

WILLIAM ROBARDS.

JUDGES AND OFFICERS OF THE SUPREME COURT OF
NORTH CAROLINA, 1919 -

CHIEF JUSTICE:

WALTER CLARK.

ASSOCIATE JUSTICES:

PLATT D. WALKER,

WILLIAM A. HOKE,

GEORGE H. BROWN,

WILLIAM R. ALLEN.

ATTORNEY-GENERAL:

JAMES S. MANNING.

ASSISTANT ATTORNEY-GENERAL:

FRANK NASH.

SUPREME COURT REPORTER:

ROBERT C. STRONG.

CLERK OF THE SUPREME COURT:

JOSEPH L. SEAWELL.

OFFICE CLERK:

EDWARD C. SEAWELL.

MARSHAL AND LIBRARIAN:

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PLATT D. WALKER
Associate Justice



GEORGE H. BROWN
Associate Justice



WALTER CLARK
Chief Justice



WILLIAM A. HOKE
Associate Justice



WILLIAM R. ALLEN
Associate Justice

NORTH CAROLINA SUPREME COURT
A. D. 1919

OFFICERS OF NORTH CAROLINA BAR ASSOCIATION,
1918-1919

PRESIDENT:

EDWIN F. AYDLETT.

VICE-PRESIDENTS:

MARK W. BROWN,

G. S. BRADSHAW,

WILLIAM DUNN, JR.

SECRETARY AND TREASURER:

THOMAS W. DAVIS.

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E. F. AYDLETT (*ex-officio*),

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Legal Ethics.....	A. W. MCLEAN
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PROGRAM

Bar Association called to order by President Edwin F. Aydlett, at 12 o'clock, noon, Saturday, January 4, 1919, in the Supreme Court Room.

Prayer by the Rt. Rev. Joseph Blount Cheshire, D.D., Bishop of North Carolina.

Address by Hon. Robert W. Winston, of Raleigh, "A Century of Law in North Carolina."

Address by Hon. Thurston T. Hicks, of Henderson, "The Supreme Court of the Future."

Address by Marshall DeLancey Haywood, of Raleigh, "The Officers of the Supreme Court, 1819-1919."

Response to the addresses, by Chief Justice Walter Clark.

PROCEEDINGS OF THE
NORTH CAROLINA BAR ASSOCIATION

IN THE SUPREME COURT ROOM

RALEIGH, 4 JANUARY, 1919, ON THE OCCASION OF THE
CELEBRATION OF THE

ONE HUNDREDTH ANNIVERSARY

OF THE ESTABLISHMENT OF

THE SUPREME COURT

OF NORTH CAROLINA

A special meeting of the North Carolina Bar Association to celebrate the one-hundredth anniversary of the Supreme Court of North Carolina was held in Raleigh, N. C., January 4, 1919. The meeting was called to order by Mr. E. F. Aydlett, of Elizabeth City, President of the Association, at 12 o'clock, noon, and the following proceedings were had:

PRESIDENT AYDLETT: The Association will come to order. Bishop Joseph B. Chesire will offer prayer.

PRAYER BY BISHOP CHESHIRE

BISHOP CHESHIRE: O God, our Father, who dost make and govern all things, we invoke Thy presence and implore Thy blessing as we are here met to commemorate Thy goodness in the continuance of our free government and our just and equal laws. Thou sittest in the Throne that judgest right; Thy special blessing is upon those who minister true judgment unto the people, and Thy hand shall cast down them that pervert truth and equity. We thank Thee for the great and good men who for a hundred years past have with wisdom and prudence interpreted and expounded the laws of our land in this honorable court, and we recognize with devout gratitude that faithfulness, integrity and purity have not in this our day been wanting to those who occupy this seat of justice. From Thee cometh every good and perfect gift; Thou givest wisdom to the prudent. We thank Thee for all who in the past or the present have served Thee and their country in making, interpreting or administering our laws. We pray Thee, O God, to continue Thy blessings upon our State and our country. Out of trials and strug-

CENTENNIAL CELEBRATION SUPREME COURT OF NORTH CAROLINA

gles Thou hast given us peace. May the peace in which we now rejoice be illustrated by still better attainments in the civil and social life of our State and of our country, and may truth and righteousness grow and strengthen in all, whether in public or private station, and bring near the accomplishment of Thy good purpose of love and good-will among all men. We ask all in His name and for His sake, Who taught us that when we pray we shall say:

Our Father Who art in heaven, hallowed would be Thy name; Thy Kingdom come; Thy will be done on earth as it is in heaven. Give us this day our daily bread, and forgive us our trespasses as we forgive those who trespass against us, and lead us not into temptation, but deliver us from evil, for Thine is the Kingdom and the power and the glory forever and ever. *Amen.*

ADDRESS BY PRESIDENT AYDLETT

Chief Justice and Associate Justices of the Supreme Court, Members of the North Carolina Bar Association, Ladies and Gentlemen:

The occasion which brings us together today is of interest not only to the Bench and Bar, but to every citizen of our great Commonwealth.

It is not claimed that the Supreme Court of North Carolina is only one hundred years old. Its origin began with the first organized government of our State. Its earlier opinions rendered prior to January, 1819, are reported in the first six volumes of the North Carolina Reports.

The Act of 1818 provided for the appointment of three judges, learned in the law, who should be styled "Judges of the Supreme Court of North Carolina, and pursuant to this act, in January, 1819, one hundred years ago, this Court was established on its present basis. Its creation under this act was a wide departure from the system, therefore, in effect, in that its Judges were not allowed to try cases in the courts below.

During its existence this Court has stood for law, order and justice, and has ably and honestly met its obligations in expounding the law and safeguarding the rights of the State and its people. It is not a law-making body, but its high and solemn duty is to declare what the law is and to construe and apply it to concrete cases regardless of public favor or croaking criticism. It has ever been true to its sacred trust, yet progressive and fearless.

We claim our earliest Judges were the first in the United States to



MARK W. BROWN
Vice-President



G. S. BRADSHAW
Vice-President



EDWIN F. AYDLETT
President



WILLIAM DUNN, JR.
Vice-President



THOMAS W. DAVIS
Secretary

OFFICERS NORTH CAROLINA BAR ASSOCIATION
A. D. 1919

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hold that the courts have the right, and it is their duty, to declare an act of the Legislature, which in their opinion is unconstitutional, null and void. It is, therefore, now fitting for us, on this Centennial, to review the history of this branch of our great Government which has had so much to do with the welfare and destiny of our people, and note the results of one hundred years administration of equal and impartial justice.

To this end, the North Carolina Bar Association at its annual meeting at Wrightsville last June passed a resolution that we take proper steps to celebrate the centenary of our Supreme Court.

The people of North Carolina have every cause to be proud of the reputation and achievements of this honorable Court. It is a great court—great in its conception, in its personnel and in its jurisdiction. Its make-up has been of strong-minded and able men, learned in the law; patient, painstaking and upright Judges; and at no time in its history has it failed to fully measure up to the purpose of its creation. At times there has been criticism. It is believed on the part of some that the filing of dissenting opinions occasionally give rise to this. The layman does not understand why there should be a difference of opinion between able jurists as to what the law is on a given state of facts and often members of the Bar become divided in their views.

The opinion of a majority of the Court is the law, and for it to go forth as the unanimous judgment of the Court carried weight which is calculated to settle the question against further dispute or agitation. The dissenting opinion tends only to weaken the force of the judgment, cause greater dissatisfaction, and sometimes criticism.

If I may be pardoned for speaking only a word of the future, I am persuaded that long before we celebrate the next centenary of this Court the practice of filing dissenting opinions will be consigned to the realms of innocuous desuetude; the opinion of the Court will be a statement of the law in that case upon its facts, and there stop; the *obiter dicta*, which has given the practitioner no little trouble, will be a thing of the past, and this Court will be so enlarged or relieved of a part of its burden by an intermediate appellate court that it can give the members of the Bar such time as is necessary to present their causes in a manner that will materially aid the Court in reaching its decision.

With these remarks, I take pleasure in introducing the first speaker on the program, one of the ablest and most learned members of our Bar, Honorable Robert W. Winston, of Raleigh, North Carolina.

CENTENNIAL CELEBRATION SUPREME COURT OF NORTH CAROLINA

A CENTURY OF LAW IN NORTH CAROLINA

By ROBERT W. WINSTON

A fair test of the worth of a government is the affection in which it is held by the citizen. It is by this standard we love to measure our brave State. Wherever a North Carolina man may go, his heart remains with his people; the sylvan Toé wanderer through the woods; Mount Mitchell, standing forth without a peer; the bleak sand-dunes of Nags Head—every foot of ground is dear to us. As the wintry winds blow through her forests of pine, or the sounding waves beat against the shores, where Virginia Dare was born, or the Cape Fear majestically sweeps to the deeper sea, it is of Moore's Creek, Guilford, King's Mountain, and of freedom, they tell—it is of unyielding resistance to unjust authority, of undying devotion to free government, based upon law. This is our heritage, this our birthright.

How has it come about, that there is still one spot on this mad and frantic globe, one spot where no red flag has ever waved, where the people are confiding and contented, where the God of our fathers is still enthroned?

CONSTITUTION—ARK OF COVENANT.

One who loves his State as a true son should love her will try to make true answer. We are a people, one in race, one in language, one in religion, and one in ideals; a people without itching ears. We have no great cities; our per capita wealth is evenly distributed; eighty per cent of our population are tillers of the soil; more than fifty per cent of the white adults are landowners; less than one-half of one per cent are foreign born—great auxiliaries, no doubt, to a stable and conservative government—but greater, far greater, than these are our just and equal laws, administered without fear, favor or affection, reward, or the hope of reward. If our sister States of the South have had such statesmen as Jefferson, Calhoun, and Clay, they have had no such jurist as Ruffin. Morley, I think, rightly contends that the great magistrate has at least as good a title to the front place in the Temple of Fame as the highest political servants or leaders of the State.

The distinguishing feature of our American Commonwealths is their constitutions. The attitude of North Carolina toward her Constitution manifests the reverence in which we hold it. Only once in a hundred



ROBERT W. WINSTON

CENTENNIAL CELEBRATION SUPREME COURT OF NORTH CAROLINA

and forty years has North Carolina materially changed her fundamental law. Louisiana and Georgia have each had seven constitutions; Virginia, Arkansas, and South Carolina have had five each; Pennsylvania four, and Illinois, New York, and Delaware three each.

As to our national charter, others may look upon it as dishonest, but North Carolina judges, in the main, agree with Burke that no man should approach to look into its defects or corruptions but with due caution; that he should never dream of beginning its reformation by its subversion; that he should approach to the faults of the State as to the wounds of a father—with pious awe and trembling solicitude. By this wise prejudice, we are taught to look with horror on those children of their country who are prompt rashly to hack that aged parent in pieces and put him into the kettle of magicians, in hopes that by their poisonous weeds and wild incantations they may regenerate the paternal constitution and renovate their father's life. Our judges feel, with Webster, that written constitutions sanctify and confirm great principles, but the latter are prior in existence to the former. Bryce expressed the same idea that our National Constitution is the ark of the covenant, whereon no man may lay rash hands; and Bryce was but following De Toqueville, M. Emile Boutmy, Gladstone, Lieber, and Henry Maine.

Our first State Constitution was adopted at Halifax in 1776. Its founders were determined that not one drop of blood which had been shed on the other side of the Atlantic during seven centuries of contest with arbitrary power should sink into the ground, but the fruits of every popular victory should be garnered up in this new government. Neither Greece nor Rome was their model, nor was Plutarch's Lives or Rousseau's Social Compact their guide. Unlike Mirabeau, Danton or Robespierre impracticable, high-sounding, they were level-headed and workable men; Hooper, Harnett, Abner Nash and Samuel Ashe, the conservatives, standing stoutly against the radicalism of Bloodworth, Person, and Wiley Jones. The result of their deliberations was a wise and practical compilation of the fundamental principles which mankind, climbing upward for centuries, had wrested from kings and tyrants, each word wet with the blood of heroes; Magna Charta of King John, of Henry III. and Edward I., the Petition of Rights of Charles I., and the Habeas Corpus acts of Charles I. and Charles II., and the great Bill of Right of William and Mary.

One hundred years ago, and as it is today, the common law of Eng-

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land was the law of this State, and there were then few statutes regulating human conduct or controlling human affairs. At that time our highways were of mud; there were no railroads, few corporations, no complicated machinery, and little commerce. The common law of England was well adapted to these primitive conditions and to the life of a simple and turbulent people, its very rigidity and harshness increasing its effectiveness. It was a day of abstractions and scholasticism. Scholars were interested in words, not in things, their concern largely being to distinguish and divide a hair twixt south and southwest side.

It is not fair, I think, to berate our forefathers because they did not enjoy the blessings of universal suffrage and the benign laws which we have today. More urgent things at that time demanded their attention. First the blade, then the ear, after that the full corn in the ear. They had not forgotten the military policy of the Celtic nations, the Goths, the Huns, the Franks, the Vandals, and the Lombards, who poured themselves all over Europe after the fall of the Roman Empire and established the feudal system on the continent and in England; so firmly indeed in England that not until the twelfth year of Charles II. was it abolished (and in Germany not until November 11, 1918). A system of slavery more complete cannot be imagined, with its aids, relief, primer—seisin, wardship, control after marriage, fines and escheats. Nor were the doings of the Stuarts and the Georges forgotten, taxation without representation, the suspension of the writ of *habeas corpus*, ship money, the forfeiture of charters, and the encroachments of the sovereign. The early patriots greatly feared a judge owned by king or commonwealth, whose sole office was to do his master's bidding. Bloody Jeffreys was to them more than a warning, and they resolved that another Thomas More should not die for conscience sake, nor should another Bedford jail imprison a Bunyan, innocent of crime. Free speech, free thought, free conscience, a free religion, and the fundamentals of a free existence mightily concerned our forefathers in '76 and 1819.

NORTH CAROLINA FOUND HERSELF, '30 TO '40.

North Carolina was not ripe for progress until the decade, 1830 to 1840, when England's reform movement of 1832 abolishing slavery, emancipating the Catholics, and culminating in the reform bill of that year swept across the Atlantic and made its impress on this Common-

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wealth. In 1835 a constitutional convention composed of the ablest men of their day was held in Raleigh. It changed the basis of representation by abolishing borough towns, which had possessed the right, *suo vigore*, of additional members in the General Assembly; by taking away from the General Assembly the election of the Governor and by giving this privilege to the people; by taking the right to vote from free negroes, and by striking out the sectarian test for office-holding. These reforms were passed by the smallest margin possible—31 to 30 in the Senate, four Eastern Senators uniting with the Western Senators chiefly from patriotic motives, but also because of the Catholic emancipation provision which removed all doubt of the right of the beloved Judge Gaston to hold the office of Supreme Court Judge, to which he had just been appointed. An era of prosperity followed. The old *laissez faire* policy of Nat. Macon received its first blow. The attention of the State was turned toward the building of roads and highways, the inauguration of a public school system, the deepening of rivers and harbors, the construction of railroads, and to general internal improvements.

In 1833 a great industrial convention had been held in Raleigh. It was composed of a hundred and twenty-five delegates from many counties. Many delegates favored a plan of railroad construction from north to south, but a larger number advocated connecting our seaboard with the mountains of this State and Tennessee. The plan finally adopted was to construct a railroad from Shephard's Point, now Morehead City, running through Goldsboro, Raleigh, Greensboro, thence on to Asheville, Murphey and Ducktown.

"To this era belong the erection of the present State Capitol, the building of the North Carolina Railroad, the Atlantic and North Carolina Railroad, the beginning of the Western North Carolina Railroad, the organization of the North Carolina Agricultural Society, the erection of the first hospital for the insane, the founding of the State School for the Deaf and Dumb and the Blind, the establishment of a system of public schools, the expansion of the University from a local high school with ninety students into a real college, whose five hundred students represented every State from the Potomac to the Gulf of Mexico, and many other progressive measures that lie at the very foundation of the present prosperity, honor and glory of the State."

These forward movements came none too soon. Prior to 1830-40 the old State was in a bad way educationally, industrially, and politically.

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Few of the people could read and write. East was divided against West. The rotten borough system gave the balance of power to the Eastern counties, having a smaller population than the West, and atrophied by hundreds of thousands of human beings in slavery. Previous to the Convention of '35 the Governor had usually been so subservient to the Legislature that made him that he was merely a figure head. From '30 to '40 the population of the State was practically at a standstill. The census of 1850 showed that one-third of all native North Carolinians were living in other States. It has taken many years and much effort to overcome the inertia of those dreary days. That our people did not perish is due to the vision of those early men of the Republic who guided and followed its destiny.

Time would fail me to tell of the vision of Archibald D. Murphey, the wisdom of Swain, and the labors of Bartlett Yancey, Joseph Caldwell, Calvin H. Wiley, John M. Morehead, Calvin Graves, William A. Graham and others. Suffice it to say, that because of these men and of their co-laborers in executive chair and legislative halls there came about an "era of progress that within the next quarter century raised North Carolina from the lowest to the highest rank among the slave-holding States of the South in all those things that make for the material, intellectual and social uplift of the people."

MODERN MATERIAL PROGRESS.

The work of these men has been taken up by Vance, by Jarvis, and by Aycock, until the dream of Murphey has become the commonplace of today. Railroads bisect our State from sea to mountains; Beaufort is soon to be a real harbor of refuge. An inland waterway uniting our sounds and bays and lakes from the harbor of Boston to the mouth of the Rio Grande seems assured; the great Bankhead and Capitol to Capitol Highway, and lateral highways, make travel easy and delightful; a six-months school term, just provided by constitutional amendment, will move us high up from our old place near the foot of column of illiteracy. Chapel Hill, under the guidance of Battle, Winston, Alderman, Venable, and Graham, has become, if not the foremost, perhaps the most serviceable, university of the South; and the brain of McIver conceived, and with the aid of Noble, Joyner and others, has made possible the higher education of our women. Spirituous liquors have been excluded from

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the State, and other progressive and benign laws have been put into effect. Agriculture has not been neglected. The A. & E. College has a great future. Seed selection, soil analysis and fertilization, crop rotation, animal industry, pig clubs for boys, canning clubs for girls, farm-life schools and comprehensive home demonstration work are remaking our rural sections. Today North Carolina spins more cotton than she produces (and more than any Southern State), raises more wheat than she consumes, has the largest per acre cotton yield, is first in the value of tobacco produced, near the top in the production of sweet potatoes, peanuts, apples, peaches and sorghum, and is in the seventh or eighth place in the aggregate wealth of her farm products.

The most radical change in our fundamental law took place in 1868, when a new Constitution was adopted. The Constitution of 1776 dealt with general principles only, leaving the details to legislative control and supervision, whereas the Constitution of 1868 deals with the details of Government. Of such constitutions, Bryce says that they are no more than codes. It may be remarked that prior to 1868 there were no appeals from our Supreme Court to the Supreme Court at Washington. Now, such appeals are frequent, having to do with interstate commerce, the violation of contracts, Employers' Liability Act, and the Fourteenth Amendment to the Constitution.

ENLARGED DEMOCRACY.

In the last century much has been accomplished through the law-making power to meet the spirit of an enlarged and universal democracy. Human slavery has been abolished and the former slave and his descendants enrolled among the electors. A homestead of one thousand dollars in land and five hundred dollars in personal property has been provided. By the Constitution of '76 only persons owning fifty acres of land could vote for a State Senator, now all electors vote for such Senator. All judges, county and State officials, including the Governor and United States Senators, are now elected by popular vote. A State Primary Law has been on the statute books a short time. It has not been sufficiently tested to justify itself. In State elections at least, it seems to be a failure. The door is open quite wide for any person to become a candidate, but the cost and labor of reaching the voter is great, and there are fewer entrances for office than under the old convention plan. The

CENTENNIAL CELEBRATION SUPREME COURT OF NORTH CAROLINA

average elector knows little of an obscure candidate residing in some other county. No doubt the primary will be of value in emergencies, when the advocate of some great popular movement and his cause have become one in the minds of the people. Imprisonment for debt has been abolished; dueling, lotteries, and gambling, thought to be the special privilege of gentlemen a hundred years ago, have succumbed to corrosive statutes sustained by a wise public sentiment. The rights of women have been greatly enlarged. Women are now entitled to the products of their own labors and to damages recovered for injury to her person or property; she may sue alone, execute a contract, and make a will disposing of her real and personal property without the consent or joinder of her husband. And she may be divorced for the one cause formerly allowed to the husband alone—adultery.

TECHNICALITIES ABOLISHED—HUMANE LAWS.

The Code of Civil Procedure, modeled after the Code of New York, was adopted in 1868. It supplants common law, pleading, and practice. John Doe and Richard Roe and Jacob Moreland, the impecunious common vouchee, are no more. No longer does the irate landowner begin his action by the absurd way of writing a note addressed to his "dear" friend, demanding an interest in the term. All such fictions are swept away and in all cases the real party in interest must now bring suit. The distinction between law and equity has been abolished. There is only one form of civil action. Pleadings have been greatly simplified and must contain a plain and concise narrative of the facts, and are to be liberally construed for the promotion of justice. A defendant in a civil action can testify in his own behalf. Proceedings supplemental to execution have taken the place of equitable *fi. fas.* and other suits to discover assets of dishonest debtors.

We sympathize with our forefathers in their fears of judicial tyranny and appreciate the safeguards which they threw around an accused person, but it would seem that they sometimes exceeded the bounds of caution. Take the first case in this Court. It may be found in 3 Murphey, at page 1 (*State v. Jim*). It seems that one Jim, a slave, was indicted for breaking into a dwelling-house with intent to steal a bank note. The indictment concluded most fortunately for the aforesaid Jim, "contrary to the form of the *statute* in such case made and pro-

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vided." Now at that time there happened to be two statutes regulating the larceny of bank notes. The bill, therefore, was quashed and a new trial granted because it concluded in the singular "contrary to the form of the statute" in such cases made and provided, instead of in the plural "contrary to the form of the statutes" in such cases made and provided. "The defendant is by this indictment," said the Court, "referred to one statute. Which shall he examine to prepare his defense? Whilst he is preparing his defense under one law, the prosecutor is arranging the charge under another, and by the perplexity thus occasioned an innocent man may be surprised into a conviction."

There has been progress since *State v. Jim!* Indictments, and specially those for murder and perjury, have been much simplified and shortened. They need not conclude against the form of the statute or statutes at all. It is not necessary to give the exact date of the alleged offense or the exact amount alleged to have been stolen. Our statutes of jeofails have wisely cured all these trivialities. The accused person may testify in his own behalf, and when the guilty party is finally convicted the sentence is executed under an order of the Governor, without awaiting the next term of court.

Death by electrocution has been substituted for hanging and corporal punishment has been abolished. The number of capital felonies has been reduced from a round dozen or more to four. Murder has been divided into first and second degree—first degree being that accomplished by premeditation, deliberation, and willfulness, such as burning, poisoning, torturing and lying in wait. Burglary has been divided into two degrees, it being now punishable with death only when the felony is committed in the night-time, in a dwelling, actually occupied, and the same as to arson. We no longer imprison children in the State's Prison or the jails; we commit them to the boys' reformatory or training school. And perhaps the most salutary change in the treatment of prisoners relates to their life in prison. The humane spirit of the day demands clean and well-ventilated jails and county homes, wholesome food and good clothing, various forms of diversion, rewards for good conduct, a division of the unfortunates into three classes—one called the Honor Class—and some compensation, but not yet enough for work performed. One visit more from Mrs. Ballington Booth, sister to the man "within closed walls," with her large sympathy and moving eloquence, and Jack Mills himself would be pleased with our prison conditions, I am sure.

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To Dorothy Dix and James C. Dobbin we are largely indebted for our first hospital for the insane, and this was followed by other like hospitals and by hospitals for the deaf, dumb and blind, the tubercular, the feeble-minded, and homes for orphans, a total of more than five thousands of these unfortunates now having the tender care of the State.

REMEDIAL STATUTES—THE CODE.

Statutes of a general character have also been passed to facilitate the administration of justice. Statutes have no roots, we are taught, but judicial decisions are seldom without them. And yet, behind many a remedial statute is some dissent of a virile minority, or some impossible situation into which the law has been thrown by an ill-considered decision. There may be, and often is, a long struggle between the forces of reaction and of progress, but the end may be seen from the beginning. Take, for example, the opinion of Lord Abinger, Sir James Scarlett, England's greatest advocate, in the case of *Priestly v. Fowler*, holding that the master is not liable for the negligence of a fellow-servant. It took three-fourths of a century to reverse this wrong to society. It furnishes, says the Ohio Court, one of many instances of how little some of the most shining talents of the advocate appear to prepare their possessor for the office of judge. The first fellow-servant decision in this State was *Ponton v. R. R.*, and it followed the English decision. This doctrine of fellow-servant was abolished by statute in North Carolina not until the year 1897.

Perhaps the wisest of these remedial statutes is the Connor Act of 1885, requiring all deeds to be registered, and practically placing an unregistered deed on a footing with an unregistered mortgage. Prior to said act, no one could with safety make a loan on North Carolina lands, and foreign capital avoided the State.

Because of such decisions as *Busbee v. Commissioners*, declaring that an action to remove cloud from title to land would not lie if the complaint alleged that the said claim was invalid ("what is the necessity for the suit, then, if the claim is not good," said the Court, and dismissed the action), the Jacob Battle Act was passed, and now any person, whether in or out of possession, can bring a party into court claiming an interest in land and contest his claim and remove the cloud. If one makes obligation to convey land and afterwards dies his executor

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or administrator, after the obligation is registered and upon receipt of the purchase money, may execute a valid deed to the obligee.

You may now join in one suit a cause of action for debt, or on account, or for tort, and in the same action attack defendant's fraudulent deed executed to avoid paying his just obligations. Great progress has been made in retaining jurisdiction of causes, if the court to which the appeal has been taken has jurisdiction, although the court in which the litigation originated had no jurisdiction. Amendments to pleadings and to records, even in this Court, are liberally allowed in the interest of substantial justice.

Napoleon was no doubt the most versatile of the children of men. He reformed everything—war, finance, arts, government, religion, and the law. On his Code Napoleon his fame rests secure. To simplify and perfect the law has been the labor of mankind from Lysurgus to David Dudley Field and Roscoe Pound. The problem is how to so simplify the law as to avoid technicalities and delays and yet preserve personal and property rights. This great task has had the attention of this Court and of this Association and much free advice has been offered by enthusiastic reformers both on and off the bench. I submit, with becoming diffidence, that *the only remedy is the trial judge*. Continuances are too easy, cross-examinations too prolix, and speeches too long—and these are evils the trial judge can correct. There are no delays in this our Supreme Court. With each recurring first Tuesday in February and last Tuesday in August, as that faithful old timepiece ticks out its ten of the o'clock, a brand new bill of fare, *a la carte*, is ready for the expectant brethren whose speeches of three-hours length, cut to thirty minutes under Rule 33, come forth under high pressure.

It is the sense of the lawyers of this State generally, I think, that the Code of Civil Procedure, together with the amendments, under the liberal construction of this Court, gives the framework for the speedy and safe dispatch of the business of courts. The Code of Civil Procedure is an improvement on common-law pleading and practice, as cases are now tried on their merits and upon the main issue. The Code may not be so accurate or scientific as common-law practice, and undoubtedly it gives this Court great leeway to affirm or reverse in the interest of substantial justice without doing violence to any well-recognized legal principle. Adopted at the end of the Civil War, brought to this State by carpet-baggers and scalawags against the wish of bench and bar, the

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fact that it is still with us is the best evidence of its worth. It is rarely the case that a new trial is granted because of a mistaken remedy under the Code. If one is in doubt as to whether he will bring an independent action or make a motion in the original cause, he simply does both and then consolidates. I have examined the last volume of our Reports and find that no new trial is therein granted because of error in pleadings. Judge Dillard while a member of this Court was in doubt as to whether he should accept the degree of LL.D. from the University, because he did not know whether old Mybra Gulley should have brought an independent action or moved in the cause! If this is the only obstacle to such honors we should now have many learned doctors in our midst. Much delay would be avoided if a three-fourths or four-fifths verdict were allowed in civil cases. The Legislature of 1919 will do the State some service if it shall break away from this fetish of a unanimous verdict. It seems strange that in a republic where the majority rule and rule supreme, and with the delays and wastage of hung juries, we should still require all twelve jurors in civil cases to be of one mind.

The doctrine of harmless error, like a specter, haunts appellants. If the merits are with the appellee, if substantial justice has been done, he may feel reasonably safe; but if an act of injustice can be seen in the record, well may he tremble—the slightest error will undo him. The tragedy of the law is when some appellate court, in the interest of supposed innocence or to suppress a supposed fraud, wanders from the beaten legal path and at the same time fails to discover on which side justice really lies. Failing to set forth in the record what the excluded answer to the obnoxious question would have been is the lion in the pathway of new trials if substantial justice has been done; but if injustice has been enacted into law, this usually benign and sleeping principle awakens into life. “*Quacunqve via data,*” justice is done, “*Fiat justitia ruat coelum.*” Sometimes the trial judge excludes a mass of incompetent evidence, and afterwards in arraying the contentions to the jury repeats such excluded evidence. It is exasperating to hear the appellate court say in a cold manner that they do not grant new trials because of error of the judge in arraying evidence. In addition to the codification of our Civil Procedure, we have codified most wisely the law of “Negotiable Instruments,” “Corporations,” “Partnerships,” and “Executors and Administrators.”

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To be a judge satisfactorily to one's self is not, nowadays, an easy task. He should be just and do right and not thwart the intelligent will of the people; but he must not decide so as to make himself ridiculous in the eyes of the judicious and to the delight of the groundlings. To be a judge and yet to so miss the law that impartial law journals and writers hold one's opinion up to merited ridicule, what could be more galling! Of the Chief Justice's opinion in the *Tobacco Cases*, Judge Harlan, in his dissent, declared that it was as sensible and learned as if he had said that black was white and white was black. Sometimes it happens that an error is made in an opinion of the Court, funds are distributed under the erroneous opinion, a petition to rehear is filed and, perforce, denied, and the principle is finally overruled in some other appeal. The point first decided, and then reversed, was that the lien of a judgment on the lands of a debtor should be displaced in favor of a junior mortgage.

OTHER STATUTES—COURT PRACTICE.

An examination of the Revisal will disclose that scores of sections have been enacted to fill some gap in the law, to meet some knotty problem, or to resolve a doubtful construction. One wise statute, as Professor Mordecai in his Lectures remarks, is worth a dozen decisions of the Court. For example, our betterment statute, in some cases, takes the place of a vendor's lien; the question which puzzled the Washington Supreme Court, "Is a husband who kills his wife entitled to the insurance on her life?" is put at rest by a statute denying such right; nor is a divorced person entitled to any portion of the estate of the spouse. Ungathered crops of a decedent belong to the personal representative and shall not pass to the widow under a will. The appointment of a person as executor shall not discharge a debt due by him to the estate; heirs shall be jointly and not severally liable for the debts of their ancestor, but not beyond the property acquired. Lord Campbell's Act, giving a suit for death by wrongful act, is a part of our jurisprudence and is most liberally construed. In many States the Employers' Compensation Act has superseded this statute. All doubt as to the legal status of illegitimates and half-blood and after-born children has been removed by statute; and wise provision has been made to supply lost or burnt records or to make easy proof of the same. Curative statutes relating to defect-

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ive probates and registration of conveyances have served a useful purpose in strengthening and preserving titles to real estate; and the actual possession of land for a short time under color, or for a longer time without color, ripening such possession into a legal title, has been wisely provided. Ours is the only State requiring a greater length of time to ripen title by adverse possession as between tenants in common than between strangers. Our registration laws meet the requirements of the Federal Reserve system, and much money has been invested therein on the easy amortization plan to persons actually engaged in agriculture. Time, which is silently pulling down and destroying the handiwork of man, is just as surely building up the title to his real estate in possession. Legacies which formerly lapsed if the legatee predeceased the testator are now preserved in the lineal line. The attempt to cure by statute defects in deeds because of vagueness of description has naturally proven abortive. The statute of frauds requires all contracts relating to land to be reduced to writing; and if the deed is lacking in an essential element, no statute can supply the defect. Stocks of goods may not be sold in bulk except upon notice to all creditors; and assignments for the benefit of creditors are safeguarded, the assignor being required to file his list of creditors and make due report to the clerk of the Superior Court. Suits for libel and slander are of ancient origin. The absurd ruling that "The greater the truth the greater the libel" has long since gone to limbo, and almost anything pertinent to the controversy, even rumors, will be admitted in mitigation of damages. Seisin, which gave the old courts much trouble to define and apply, has been defined by statute to be any right, title or interest in the inheritance. This has been construed to enable the husband to inherit from his deceased child, leaving no brother or sister or descendants of such, and though there may be an outstanding estate by the curtesy or for life and although the husband was not of the blood of the ancestor from whom such child inherits. That is to say, the husband is seized of the inheritance despite an outstanding particular life estate. But one is not entitled to a homestead, or to dower, in a remainder.

ATTITUDE OF COURTS TO STATUTES.

Let us now consider the attitude of this Court towards the work of the lawmakers. Has this Court heard the voice of the people? The late

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Col. Tazewell Hargrove used to tell the story of an old man who lay dying. His two sons, one weak-minded, having been called to his bedside, he said, "My dear boys, to Thomas I am going to leave the bulk of my fortune, and I will appoint you, Richard, his trustee." "Father," said the weak-minded youth, "won't you give Dick the bulk of the estate and make me *his trustee*?"

We recall that Jefferson wrote to Roane, "If the judges have the power to annul statutes in conflict with the Constitution, then the Constitution and laws are a mere thing of wax which they may twist and shape into any form they please." The power of courts so to do has been disputed at all times. North Carolina, though "the freest of the free," was a pioneer in upholding such power. In 1787 the highest Court in this State declared an act of the Legislature unconstitutional and void, Judge Iredell upholding the power and Governor Richard Dobbs Speight championing the opposition. Iredell addressed an open letter to Speight, which text-writers pronounce the ablest and most complete exposition of the power of the judiciary over unconstitutional legislation which had appeared in the whole literature on the subject. Governor Speight maintained that the judiciary had usurped all the functions of government. Judge Iredell replied that when a judge took an oath to support the Constitution, this oath ought to bind him, and that if an act of the Legislature conflicted with the Constitution, to sustain it would be to do violence not only to the Constitution but to the oath he had taken.

The members of this Court, at its organization in January, 1819, were of the Iredell school of thought. Chief Justice Taylor and Judge Hall were graduates of William and Mary College, the college of John Marshall, with whom they, as well as Judge Henderson, the ablest judge on the bench, were in full accord. They maintained that it is the duty of a judge to exercise his judgment, and not his will, and that judges should be free and independent.

We read in John Quincy Adams' Diary a remark of Senator Giles of Virginia, that he and men of the Jefferson school treated with the utmost contempt this idea of an independent judiciary.

In a few months after this Court was organized, the epoch-making opinion of Marshall in the *Dartmouth College case* was delivered, holding that the charter of a college was a contract which the Legislature of New Hampshire had no right to alter in any material respect with-

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out the consent of the trustees. It may be remarked that Justice Gabriel Duvall, without writing a word, dissented himself into immortality.

North Carolina was soon confronted with a similar question in the famous case of *Hoke against Henderson*. The question here presented was whether an office is the private property of a citizen. This Court held that it was, and that he could be deprived of it only by the law of the land. *Hoke against Henderson* was not reversed until early in the present century, when it was held that an office is not based on contract, but is held by right of tenure and is subject to the control of the Legislature. Many vigorous dissents were filed before this consummation came about. When courts cease to be farseeing and give utterance to doctrines opposed to orderly and natural progress and development, as in the *Dartmouth College case*, the *Dred Scott* decision, the *Income Tax cases*, they invite attack. It is to be wished that judges may so administer the important trust committed to them, with an eye not only to precedent but to manifest destiny, to things not of today or tomorrow but of a hundred years hence, that further attacks upon the system of which they are exponents will not be made.

The doctrine of the recall of judicial decisions is so humiliating to an honest-minded judge that an office held subject to such thralldom would have as little of honor as of emolument. Our judges were first appointed by the Crown, afterwards by the Executive (together with the Council of State), then by the Legislature, and since 1868 they have been elected by the people. In some States the final plunge has been made and judges and their opinions are subject to popular recall. What a commentary upon the fickleness and instability of the people or upon the narrowness of the courts! The dignity of our judiciary has been upheld because the courts have usually, in the first instance, planted themselves upon the immutable principles of justice and right, having due regard to the rights of property and of the individual.

DECISIONS: WISE AND OTHERWISE.

It was early held that a corporation, to which had been granted a charter to operate a ferry or maintain a bridge across a river, had no exclusive right to such privilege, and that to so hold would be to create a monopoly, and that other bridges and ferries might be chartered, main-

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tained and operated. Indeed our Court has been careful to vitalize our declaration of rights, that perpetuities and monopolies are contrary to the genius of a free people and ought not to be allowed. For example, the grant to a bank of a perpetual charter with the power of charging any rate of interest that may be agreed upon creates a special privilege and is a monopoly and void. So the grant by the city to a corporation of the exclusive use of its streets for water-works constitutes a monopoly and is void. All attempts to unduly tie up real estate or create perpetuities therein have been wisely thwarted and we adhere to the English rule laid down in *Peter Thelusson's Will case*, a life or lives in being twenty-one years thereafter. For a like reason, the *Rule in Shelley's case* is firmly engrafted into the law of real estate. To give the first taker a fee simple, though the instrument seems to convey to him only a life estate, and to construe the words heirs or heirs of the body of such first taker as words of limitation and not of purchase, puts the lands in the channels of commerce and avoids entails. As our courts have well said, "It is not a rule of construction, it is a rule of tenure, a rule of law." Professor Mordecai in his comprehensive Law Lectures gives this further reason, "Thou shalt not seethe the kid in its mother's milk. Why not? Because the law forbids it. So with the *Rule in Shelley's case*."

Courts have had much trouble in giving effect to limitations in deeds or wills dependent upon one dying without heirs or heirs of the body, such limitations being void for remoteness. To meet this difficulty, in 1827, the Legislature enacted that in such cases such words should be interpreted to mean when such person shall die not having such heir or issue or child living at the time of his death. What a tempest has raged around Pearson's great opinion in *Hilliard against Kearney*! This opinion is a half-century ahead of its time and in line with modern thought. It declares that when an estate is defeasible and no time is fixed on at which it is to become absolute, and the property itself is given and not the mere use of it, if there be any intermediate period between the death of the testator and the death of the legatee at which the estate may fairly be considered absolute, that time will be adopted for the reason that while, on the one hand, testators are not apt to have reference to what may happen between the making of the will and their own death, inasmuch as such an event may be provided for by a codicil

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or another will; on the other, it is highly improbable that they ever mean, after giving the property itself, to make the estate defeasible during the entire lifetime of the legatee and, in effect, give merely the interest or use of it, which is inconsistent with the prior gift of the property and deprives the primary object of bounty of the right ever to exercise full ownership over it—*e. g.*, A gift to A. if he arrives at the age of twenty-one, but if he dies without leaving a child the property is to go to B., the intermediate period is adopted and the gift is absolute at his age of twenty-one.

Since the act of 1827 the doctrine of Hilliard and Kearney no longer applies, it would seem. The mischief to be remedied by this act was to prevent the failure of a remainder to take effect because of remoteness. It only establishes a rule of construction by means of which the second estate could under certain circumstances be validated and upheld, and did not intend to change the nature of the first estate or make the second estate a qualification of the first. To make said act serve the further purpose of absolutely preventing a vesting of the remainder during the lifetime of the testator has created much uncertainty and has tied up estates for the use of unborn generations. We have a very wise statute authorizing the sale of contingent estates in land, and it has been liberally construed. Progress was made at one time in the unfettering of estates by opinions holding that contingencies which impart a present interest of which the future enjoyment was contingent are defeasible and may be the subject of release operating as an estoppel on the heirs and effectual as a valid conveyance. In one case a father devised to his son certain property and provided that if the son died unmarried or leaving no children the property should go to the testator's brothers or sisters. It was held that the son and the living brothers and sisters of the said testator could make a valid conveyance, and if all the brothers and sisters of the said testator should thereafter die leaving children such last-named children would be estopped by the deed of their ancestors. Of late years there has been a tendency to react from this line of cases.

This Court has not hesitated to strike down acts of the Legislature which manifestly violated the National or State constitutions. For example, a stay law staying the collection of debts was declared void, and an act providing that where an owner of swamp lands fails to pay all taxes levied or which ought to have been levied on or before a certain

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date, such lands should be forfeited to the State without any judicial proceedings.

The State-wide Highway Law of 1917 failed to have the approval of this Court, but it is confidently expected that in 1919 the lawmakers will enact another statute conforming to the requirements of this Court and giving our State the benefit of the same. North Carolina's climate and scenery and diversity of soil, its stretch from sea to mountains are so fine, that it is little short of a calamity that she shall not have highways alluring pleasure-seekers, like the Trossacks and the Riviera.

A good illustration of the progress of judicial opinion is furnished by the attitude of this Court to Article IX, section 3, of the Constitution, providing for a four-months school term. Twenty-five years ago the case of *Barksdale v. Commissioners* was decided by a divided Court. It was then held that an act of the Legislature authorizing the county commissioners of a county to exceed the limit of taxation provided by Article V, section 1, was unconstitutional and void. The gist of the opinion was that schools were not a necessary expense of the county, and that the equation in taxation must be observed. This was more than a fourth of a century ago. The University had not then become a part of the life of the people; there were no teachers' training schools; the public school teachers were not organized. The people of the State chafed under the *Barksdale decision* until 1908, when *Collie's case* came to the Supreme Court, and upon the same state of facts as in the *Barksdale case*, *Barksdale* was reversed. The Court simply caught step with the people, and has since held that electric lights for the use of a town or city is a necessary expense. Why not schools also?

In contrast with the *Barksdale decision* is the opinion in a very recent "No-Fence Law" case. It boldly sweeps aside the earlier decisions, upholding the State policy that stock might range where they would, and that crops, not hogs, should be fenced, and declares "The defendants contend that under the decisions of the Court in *Jones* and *Laws cases* it was held that by the public policy of this State the owners of stock are allowed the privilege of letting them run at large upon the property of others without being liable for damages done by them in such trespasses, and that, on the contrary, the owners of crops are liable for not keeping up fences to prevent trespasses from their neighbor's stock." This loses sight of the fact that these decisions were rendered prior to

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the war in 1860—fifty-eight years ago—and that in the meantime the public policy of the State as to fences, as evinced by numerous statutes and provisions, is now exactly the contrary.

Statutes authorizing local tax assessments for roads, for drainage, and those regulating prohibition, upholding the jug law, enforcing vaccination, and requiring the signature of the wife and her private examination to a chattle mortgage of the household and kitchen furniture have been liberally construed and upheld. About 1870 this Court refused to give to the Legislature its opinion as to the tenure of office of the members of the General Assembly; three of the judges wrote letters declining for the reason that the Constitution of 1868 made forever separate the three departments of government. Since that time, however, this Court has receded from that position and given its opinion as to the length of the term of office of its own members.

EVIDENCE PROGRESSIVE.

One of the most difficult matters for lawmakers and judges is the law of evidence. Professor Thayer and Justice Holmes say that the law of evidence is the creature of experience, not of logic, and that the dealings of men are not dependent upon mathematical certainty. It was conceived originally that witnesses should always be present, but this was found impracticable and the general rule has become honeycombed with so-called exceptions based, as Wigmore says, on circumstantial guarantee of trustworthiness and necessity. Boundaries, pedigree and expert evidence had been recognized among the leading exceptions to the rule excluding hearsay evidence, such having been admitted from necessity; but there is at the present time an even more liberal tendency, and rules found by the business world to be safe for ordinary transactions have been adopted by the courts which are no longer pedantic, but practical.

The question was early presented in this State, whether a person not an expert could testify to one's mental condition or capacity. Judge Gaston delivered the first opinion, in the *Clary Will Case*, upholding the admissibility of such evidence. Of Judge Gaston's opinion, Redfield says that it was done with great ability, and Wigmore calls it the great law-making and argument furnishing precedent for the earlier rulings. George E. Badger, our greatest forensic orator, who enjoyed a large practice before the U. S. Supreme Court, was of counsel in the *Clary*

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Will Case. Evidence of this kind is not designated as expert, but opinion evidence, and the distinction is well marked.

Great progress has been made regulating the proof of handwriting. The old rule of Outlaw and Hurdle, that the jury must hear, and not see, has yielded to the better ruling that all possible light upon this mooted question should be let in. The disputed writing and the admitted, or proven genuine writing, may now be shown to the jury and an expert witness may explain and illustrate his testimony to them and his conclusions and reasons for the same. North Carolina and Louisiana were the only States forbidding the jury to exercise their eyesight in such circumstances.

It has been held competent, in an insurance case, to ask a witness, who had known the insured intimately for months, if he was temperate in the use of liquors. This was held to be neither expert nor opinion evidence, but the statement of a fact. Train sheets made out by a train dispatcher from reports telegraphed to him by a station agent and showing the position of a train at a certain time are admissible, as are daily records kept by a recluse for his own use and showing that it rained on a given day at a given place. The court, not the jury, passes on the question of expert or nonexpert; and a wheelwright, who did not know what was the square root of 49, was admitted as an expert to testify to a question of hydraulics, the question being how much does the withdrawal of so many inches of water from a pond effect the potential capacity of its waterhead.

At first our courts were slow to admit photographs in evidence, but now not only photographs, but messages by telephone, are admitted. The mortuary tables and the charge of the judge upon request may be handed to the jury for their consideration; indeed the conduct of a well-trained dog in following the trail will not be excluded under proper safeguards.

PAROL EVIDENCE—PAROL TRUSTS.

Our courts have a natural desire to do the right thing. This tendency exhibits itself in letting down the bars for parol evidence to vary the terms of a written instrument. When the entire contract has been reduced to writing, and there is no fraud, a relaxation of this rule is regrettable. Moffitt and Maness is the safe rule, as the latest utterances of this Court attest.

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Of the Statute of Frauds an English judge remarked that each word was worth a subsidy. Professor Smith says that he is not so sure of this, though each word has undoubtedly *cost* a subsidy. The Statute of Frauds has been enacted in part only with us. The seventh section, forbidding the creation of parol trusts or confidence of lands, unless manifested or proved by some writing, is not in force. We often wish that it were. The law on the subject is in great confusion. The opinion of Pearson in *Shelton's case* has been departed from and the beneficent provisions of the Statute of Frauds occasionally set at naught. We concede that at common law no writing was necessary either to pass title or to create a trust. The vendor handed to the vendee a clod of dirt and put him in possession in the name of livery of seizin, and a trust could then be engrafted on the land by parol. To say that the failure to enact the clause relating to parol trusts warrants the doctrine that any bargain by word of mouth concerning lands may be enforced because the specious plea of "parol trust" is relied on would seem to beg the question. What is a parol trust? It cannot exist when there is no fiduciary relationship, when neither party has title to the land, and when the party invoking the doctrine has not paid the purchase money. For example, it cannot embrace a loss of a bargain because one party has broken his word and bought at public sale lands which the other party claims the purchaser agreed to buy for him. Is not the safe rule that when there is no well-recognized trust relation between the parties the mere words of the holder of the legal title will not suffice to create such trust?

INNOCENT HOLDER FOR VALUE.

Commercial paper is, of course, the life-blood of trade, not one-hundredth of one per cent of business being based on actual money. When the rule admitting parol evidence is extended to such paper, in the hands of a holder for value, contrary to the well-recognized rules of the law-merchant, is not the life of trade imperiled? Some notes are necessarily dishonored even in the hands of an innocent holder for value and without notice; for example, those tinctured with usury or based on the violation of some statute, such as gambling, and all such notes as fail to comply with the wise provisions of our Negotiable Instrument Act. But when it was declared that a municipal bond was invalid in the hands of an innocent holder because the roll was not called three

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separate times in the Senate and in the House when the act authorizing the bond issue was on its passage, the credit of the State suffered. The Supreme Court at Washington soon set us right in this matter. Six and eight-cent cotton was pinching us in those days! M. V. Lanier, a great lawyer, dug up this point in the *Oxford Bond Case*. That a note due in two or three years, interest payable semi-annually, is dishonored upon failure to pay the first installment of interest, and that the party who acquired the same in due course without notice and for full value is not protected was held in an inferior court in New York and afterwards followed in this State, how wisely time will determine. Light and trifling circumstances showing knowledge of the fraud can only be justified where the transaction is of such publicity and extent that the commercial world may be presumed to have notice thereof; for example, the fraudulent sales, up and down the land, of sewing machines, Percheron horses, and the like.

“CYC.” AND LIENS.

We thus see that numerous changes have occurred in many departments of the law, particularly adjective law, and that both civil and criminal procedure and practice have been revolutionized. Sanders on Pleading and Evidence, which Chief Justice Smith and my father used to tell me was the *vade mecum* of the common-law lawyer, has given place to “Cyc.” and Corpus Juris. Well do I remember with what scorn these black-letter lawyers looked upon the coming out of the Encyclopedia of Law—a mechanical and alphabetical arrangement to supply the place of brains. And the advertisement of such books! How offensive! A great locomotive labeled “Cyc.,” like the Bull of Basham, dashing down the track and hurling Story and Fearn and Greenleaf and Sugden and Stephen hither and yon; or else some care-worn attorney, with fingers running through dishevelled hair, and so perplexed until the A. & E. arrived, and then—all smiles! And yet the substantive law has been altered but little these hundred years—real property, wills, contracts, principal and agent, sales, executors and administrators, legacies, bailment, and the right of a citizen to personal liberty and personal security—the law governing all these subjects remains practically the same.

Our Government lives up to the principle that the laborer is worthy

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of his hire and makes ample provision that his wage shall be secure. The farm laborer has his lien on the crop, ahead of all other liens; the mechanic has his lien on the building; the materialman and subcontractor have their liens; the hotel and boarding-house have their lien on the baggage; the liveryman his lien on the stock; the doctor is preferred as to his services in the last illness of his patient; all classes seem to have some kind of lien except the lawyer, and he comes in only when he is acting as an officer of the court and under its orders and there is a fund created by his efforts and within the custody of the court.

IMPORTANT DECISIONS.

The harsh rule of *Cutter v. Powell* that there can be no recovery upon a *quantum meruit* for breach of an entire contract, though it had been nearly performed, and the breach is occasioned by the death of the employee, has been greatly modified in the interest of substantial justice. One who contracted to serve for a stated period at so much a year, payable monthly, was held entitled to recover by the month, though he quit his employment before the end of the period.

The greatest good to the greatest number being the law of this Court, if one erect a dam across a floatable stream he must arrange suitable sluiceways for the convenient passage of logs and timber, and a floatable stream is held to be one down which, at ordinary seasons of rainfall, logs may be floated. And again, riparian owners may not materially diminish the flow of a stream by extracting water therefrom and to so deflect such water to the injury of lower riparian owners is actionable; as it is likewise actionable to pollute the water of a stream by allowing raw sewage therein. The watersheds of cities and towns have the fostering aid of the court; the right to pure and wholesome water as it flows down the rivers and streams is rigidly upheld as against the right of parties up the stream to dump raw sewage therein; such latter right being a servient easement.

This Court has yielded wholeheartedly to the doctrine of the police power of the State, the safety of the people being *suprema lex*. Statutes regulating bucket shops, making it presumptive evidence of gambling to purchase any article for future delivery when no immediate delivery takes place, raising presumptions of guilt from the bare possession of a small quantity of spirituous liquors, making the place of de-

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livery the place of sale of spirituous liquors, requiring cities, towns and manufacturing plants to put in sanitary filtration and other appliances to protect watersheds; these and many like statutes have been liberally construed by the Court to the great benefit of the people.

On the question of the constitutionality of a statute which directed the proper official to seize and confiscate fishing nets which were engaged in violating the fishing laws there was a sharp division of the Court, the majority declaring that the statute was valid.

Under the police power, and for the protection of morals, acts have been upheld making it a misdemeanor to use profane and indecent language in public places; forbidding the doing on Sunday of labor, work or business of one's ordinary calling; an act of this kind was, however, declared void which attempted to prohibit, because done on Sunday, work done in private and which did not effect public decency or disturb the religious devotions of others. The Christian religion is no part of the common law, and contracts executed on Sunday have been upheld.

The kindred right of Eminent Domain, the right of governmental agencies to appropriate the property of the citizen for general good, is a favorite of our courts. In a leading case, soon after this Court was organized, it was held that the General Assembly could acquire not only the easement, but all interest of the individual, the only restriction being that the property must be for public, not for private, uses, and that it must be upon just compensation. The Constitution makes no provision for compensation, but the principle is so grounded in natural equity that it has never been denied to be a part of the law of this State, and such compensation need not precede the taking, so that provision is made that the owner will be surely and ultimately compensated.

CONTEMPT AND PUBLIC-SERVICE CORPORATION.

On the subject of contempt this Court has taken an advanced position, holding that when a trial judge was assaulted in his room at the hotel after court had adjourned for the term, though no formal announcement had been made and such assault was on account of a sentence of the judge during said term, such judge was within his rights in summarily punishing the offender for contempt. It is a matter of interest to the friends of the Secretary of the Navy to know that the U. S. Supreme Court has just affirmed a contempt punishment of a Toledo editor in

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circumstances almost identical with those which so stirred our State some dozen years ago when Josephus Daniels was heavily fined by Judge Purnell and subsequently released by that brave and loyal son of the State, Judge Jeter C. Pritchard. The vigorous dissent of Justice Holmes in the Toledo case must be the law. It cannot be otherwise in a free republic.

This State and perhaps Texas seem to be the only jurisdictions in which mental anguish is recoverable for a negligent failure to deliver a telegram designated as a death message. Such cases, in their various ramifications, are indeed a puzzle to our courts. Public-service corporations have been held liable in damages, actual and compensatory, for the violation of contracts with the public, and such damages may likewise embrace any humiliation or disgrace thereby occasioned. And we are one of the few States permitting an injured party to sue into a water contract made by a water company with a city and guaranteeing flow and pressure of water sufficient for domestic and fire purposes, which contract had been broken by the company with resulting injury.

NEGLIGENCE MASTER AND SERVANT.

No branch of the law has undergone greater change than the law of negligence, particularly as between master and servant. Has not the time about come in America, as it has actually come in England, when a servant engaged in complicated work must be compensated for injuries occurring while in the performance of duty, though the master be not negligent? Society is so complicated and the proper relation of man to man such that the stronger must bear the burdens of the weaker. With the abolition of the fellow-servant rule and of the assumption of risk a long step forward was taken; and though we have no employers' compensation act, this Court has been at all times liberal and astute to discover evidence of negligence. Thus it is negligence in the master not to instruct a green hand working with complicated machinery. The failing to promulgate reasonably safe rules for doing work, in such cases, is likewise negligent; and so is the failure, periodically, to inspect elevators and other dangerous appliances. The duty of the master to furnish safe appliances, a safe place, and to make reasonably safe rules for the servant is enforced with vigor. At one time, under the catch phrase "the continuous negligent omission of duty," it seemed that the servant

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might recover for the negligence of the master who failed in this primary duty, although the servant was himself guilty of contributory negligence. But, at the first opportunity, this was reversed and it was held not true as an abstract proposition that the defense of contributory negligence is not available to the defendant in such cases. If the injured party is negligent (except when engaged in railroading, which is now regulated by a statute conforming to the Federal statute), and such negligence is the proximate cause of his injury, he is barred. The employee of a manufacturing plant assumes all risks incident to his employment, except as to defective appliances, which he does not assume unless the defect is so obviously dangerous that no prudent man would continue to work and incur the risks. If an infant under the statutory age is employed in a factory and is injured, the employer is liable, although the infant was not at the time in the actual line of his work. So the owner of a railroad is liable for the negligence of its lessee in operating the road.

The doctrine of the last clear chance (Davies and Mann) has been adopted by our courts. So far has this been carried that it is really an advantage to the cause of the plaintiff that his intestate was drunk and down on the track when killed, because the engineer could have discovered his peril the more readily. It is negligence not to stop the train for one that could be seen by the engineer on a trestle or bridge, or for an infant. This rule was, however, not adopted without a stiff dissent. It is not negligence not to stop the train for a person walking on the track and apparently in possession of his faculties. It is presumed that he will get off, and this presumption protects the railroad until the moment of impact. Such holdings as *Smith v. Railroad*, that one riding in a passenger coach attached to a freight train and standing up between the seats was thereby guilty of such contributory negligence that he could not recover damages if injured by the negligent jerking of the train sounds harsh a third of a century later.

"Upon the whole," says Professor Mordecai, "I take it that we may consider the law of this State now to be: That the principal is liable for the negligence, unskillfulness, frauds, trespasses and torts of his agent, although such trespasses and torts be willful, wanton and malicious; provided they be done either by the direction, assent or authority of the principal, or are subsequently ratified by him, or are committed

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by the agent in the prosecution of the principal's business or within the scope of such agent's employment in the discharge of duties assigned to him and while in the discharge thereof; or it seems, if the act be done with the belief that it will benefit the principal and with the intention to advance his interests, and that this applies alike to individuals and corporations, although the distinctions between individuals and corporations and between different classes of corporations heretofore pointed out may exist. If the wrongful act of the employee be wanton and malicious, only compensatory damages will be allowed, even against railroads. Railroad corporations are liable for injury, insult, violence and ill-treatment to passengers inflicted by their employees, though such injuries be the result of the willful and malicious act of an employee, and although the employee acted in consequence of charges made against him and epithets applied to him by the passenger such as no good man would deserve and no brave man would submit to."

CHIEF JUSTICE RUFFIN—EQUITY.

When this Court was organized there were no text-books or treatises of value on the subject of Equity. Blackstone devotes less than twenty pages of his commentaries to it. The fame of our great Chief Justice Ruffin rests for all time upon his comprehensive grasp of this subject. He blazed the way, and his fame is greater as time passes—of him and of Lemuel Shaw, Chief Justice of Massachusetts, and of John Gibson, Chief Justice of Pennsylvania, and of Charles Doe, Chief Justice of New Hampshire, Professor Pound, Dean of the Harvard Law School, declares that they are the greatest judges that have adorned a State bench.

NEGRO LEGISLATION.

If I could I would let this occasion pass without a discordant note; but he is a false prophet who speaks only smooth things. From John Morley's Diary of September 1, 1910, I read: "Today Booker Washington comes to Skibo, where I am staying, being a great friend of my host's. I had talks with him when I was in America, six years ago. The future of the negro in the United States has always profoundly interested and excited me, as well it might. What will their numbers amount to twenty or fifty years hence? Terrible to think of it! Talk

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of India and other insoluble problems of great states, I declare the American negro often strikes me as the hardest of them all."

These words were spoken by a friend of America, a careful and wise statesman, a liberal and an optimist. Shall we take them to heart? So long had England shut her ears to Ireland's plea that when her day of trial came (July 31, 1914) hundreds of thousands of British soldiers were required to guard other hundreds of thousands of discontented Irishmen, more than a million men remaining inactive while the pillars of civilization were being torn away. Had the great war broken out in the days of Populism, when the negro was contending for his rights, what would have been the consequences! And when another war shall come and the negro is smarting under the servitude in which an inexorable fate has placed him and must keep him, God pity us of the South.

We do not apologize for, nor would we undo, one piece of North Carolina legislation affecting the negro. The constitutional amendment taking away his vote is necessary, and so are the laws separating whites and blacks *toto coelo* in railroad trains, street cars, theaters, and other public places. If two races occupy the same country on an equality, the end has always been amalgamation. Ethnologists say that this will be our fate. I do not think so. The last sixty years have deepened the instinct of race prejudice and the danger lies another way. Even in this calm and judicial presence, let me say that as things now stand, the alternatives are: amalgamation, extermination, emigration, or servitude. I have my views, but this is neither the time nor place to promulgate

SIDELIGHTS ON THIS COURT, ETC.

There are some sidelights on the legal and legislative history of the last hundred years that may be of interest. One of the most noted dissents, considering the personal consequences, is Pearson's, in *Spruill v. Leary*, the dissenting opinion becoming the law in *Myers v. Craig*. The point as at first decided was that collateral warranty barred the heirs of the warrantor and those claiming under him—really too dry a subject to have caused any unpleasantness between the two eminent Chief Justices. The earnest dissent of Ruffin in *Wiswall against Brinson*, that if a landowner was answerable in damages for negligence of one employed to move a house, the whole of life would fall into the relationship of master and servant, profoundly impressed the older lawyers and

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has been quoted in Westminster Hall. Rodman's dissent in *Long v. Long* no doubt changed the law in divorce matters, bringing about section 1561 (4) of the Revisal. The humane dissent of Battle changed the rule excluding threats of the deceased communicated to the prisoner. The dissent of Merrimon in the *Barksdale case* disclosed his larger vision. Bynum's dissent in the North Carolina lease matter gave him merited fame; as did the dissent of the present Chief Justice in the *Office Holding Cases*; and his dissenting opinions in the matter of contracts of married women and of the homestead led up, respectively, to the Martin Act, which allows the wife to contract without the joinder of her husband, and to such a change in the law of homestead that when a homestead is now sold it ceases to be exempt in the hands of the purchaser. Iredell's dissent in *Chisholm v. Georgia*, as is well known, brought about the Eleventh Amendment of the Constitution. Bartholomew F. Moore's brief in *State v. Will*, a slave, is one of the most impressive documents on file. It may be found in Peele's *Distinguished North Carolinians*. It advocated the right of a slave to slay his master in self-defense, and saved his life. The most important civil cause, considering the length of the trial, the amount involved, the ability of the attorneys engaged, the prominence of the trial judge and of the suitors and witnesses, is the *Johnson Will Case*. It is in a class to itself. The cause which aroused most bitterness, dividing a great denomination, and coming four times to this Court, was *Gattis and Kilgo*. The decisions in the *Alsbrook case*, putting the W. & W. R. R. on the tax books, though exempted from taxation by charter; and in the *Selma Connection case*, requiring the railroad to make convenient connection with Raleigh, were affirmed by the U. S. Supreme Court and are far-reaching and progressive in sweep and novelty. The most exciting and dramatic criminal cause was *State v. Boyle*.

Prior to the Sixty-third Reports, no writ of error had gone from this Court to the Supreme Court at Washington. Since then fifty-nine writs of error have been disposed of by said Court, with the following results:

Dismissed	17
Affirmed	20
Reversed	22
	—
	59

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Affirmances, 47 per cent of appeals. This Court, disregarding Chief Justice Bleckley's caution that a Court reverse all errors except its own, has overruled itself one hundred and seventy times in a hundred years. The longest term of service on this bench is that of the present Chief Justice—thirty years; next in length of service come Pearson and Ruffin, twenty-nine years and ten days and twenty-five years each, respectively. The longest term of service on the Superior Court bench was John M. Dick's twenty-seven years. Judge Oliver H. Allen, now of our Superior Court bench, is a veteran of twenty-one years service. Of the olden day, the legislator having the longest service was Joseph Riddick of Gates—twenty-nine years in the House and four years in the Senate—thirty-three in all; and Harry W. Stubbs of Martin has to his credit a longer legislative record than any living man—twenty-four years in Senate and House. *Amicus Curiae* of this Court, for years and years, was Patrick Henry Winston, Sr., whose argument won *Cloud v. Webb*, and to whom Pearson pays high tribute in *Day v. Howard*.

APOSTROPHE TO JUDGES.

The task which the partiality of my brethren has assigned me is now completed. Patriotic duties to our country, before the great war ended and since, and a busy professional life, made more onerous by the absence of a son, now a captain in that war, have prevented a more comprehensive review of this interesting subject. Sometimes when friends have gathered around the fireside in a sister State I have heard those who have made a study of North Carolina remark, "You North Carolina folks have a great way of knowing one another; you seem to be one big family." And so we are, both as to the quick and the dead. And the spirit of the departed, who wrought and labored in these halls, and many of whom look down upon us from these walls, seems to be about us on this interesting occasion—Taylor, the Mansfield of the bench; the strong-minded Henderson; the well-furnished Hall and Daniel; Ruffin, the stern and clear-minded prophet; Gaston, the man of righteousness; the courtly Toomer; the profound Nash; the dependable Battle; the versatile and original Pearson; the accomplished Manly; Reade, the caustic logician; Smith, the well-versed jurist; Bynum, Rodman, and Boyden, profound students of the law; Dick, the belle-

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letter scholar; the slow but safe Faircloth; Settle, the statesman; Ashe, every inch the judge; Dillard, the sweet-spirited dispenser of justice and equity; Merrimon, the free lance; Ruffin, Jr., a terror to frauds and shams; honest Joe Davis; the imperious Avery; the erudite and discriminating Shepherd; the incisive MacRae; the well-rounded Burwell; the rugged Furches; the lovable Cook; and the legal idealist, Douglass, and their successors surviving—all, all, are in this presence today.

The mariner of old said to Neptune, in a great tempest: "O God! thou mayest save me if thou wilt, or if thou wilt thou mayest destroy me; but whether or no, I will steer my rudder true." Through sunshine and shadow, these hundred eventful years, this, too, has been the prayer of North Carolina judges.

Mr. President and gentlemen of the Supreme Court, North Carolina has a right to our love and pride. "Behold her and judge for yourselves."

SOME AUTHORITIES AND COMMENT.

To preserve something of the flavor of our law and for benefit of younger brethren, let me append:

Lord Denman's Act (see Rev., 1628) allows defendant in civil action to testify, passed in 1866; in criminal cases defendant allowed to testify in 1881. Lord Campbell's Act, recovery for death by wrongful act, Rev., sec. 59.

Important statutes and decisions relating to real estate: Act of 1827, construes contingent limitations, Rev., 1851; act of 1903 authorizes sale of contingent interests, Rev., 1590; act defining seisin ("Asa Biggs Act"), Rev., 1556, Rule 12; act 1879, making deed fee simple without word "heirs," Rev., 946; act 1885, Connor Act, requiring registration of all deeds, Rev., 980; act 1891, to cure vagueness of description, Rev., 948; act 1893, quieting title, Jacob Battle Act, Rev., 1589.

Perhaps greatest legal battles have waged around act 1827: *Hilliard v. Kearney*, 45—221, leading case before act; since act, Shepherd's great opinion, *Starnes v. Hill*, 112—1; 134—24; 165—20. Martin Act, Laws 1911, ch. 109; Fellow-servant Statute, Rev., 2646; Laws 1897, ch. 56; acts abolishing contributory negligence and assumption of risk, Laws 1913, ch. 6; 1915, ch. 356. Judge Asa Biggs lost *Lawrence v. Pitt*, 46—

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352 (a life estate depriving his client of seisin); next session, he being a member, the Legislature defined seisin to be any interest in freehold. The common-law definition of seisin would seem to deprive one of homestead in remainder or reversion, 87—79; and widow would have no dower therein, 90—189. *Dos de dote!* Act quieting title is liberally construed, 154—157; 151—615; 173—525. The contingent remainder act is constitutional and a favorite, 142—154; 165—64; 132—549; fountain-head of doctrine, *Ex Parte Dodd*, 62—97; act of 1879, "Heirs" statute, liberally construed, 133—5; prior to statute, see *Vickers v. Leigh*, 104—257, title to large part of Durham City confirmed by labors of W. W. Fuller.

Safe rule governing parol trust, *Shelton's case*, 58—292; 64—772; *contra*, 151—26. Evidence progressive, 145—385; 147—564; 138—337. *Outlaw v. Hurdle*, 46—150. *Clary Will Case*, 24—78.

Negotiable Instrument Act, Rev., ch. 54, resolves scores of doubtful points governing bills, etc. (not sufficiently studied by the profession). *Farthing v. Dark*, 109—291, dangerous doctrine, subsequently overruled; *do.*, 153—475. Recovery on special contracts: *Cutter v. Powell*, an English case; doctrine repudiated: *Gorman v. Bellemey*, 82—497; 95—98. *Leak v. Gay*, 107—468, overruled in *Thornton v. Vanstory*, 113—196 (after funds distributed in former case). *Cheek v. Walker*, 138—446, upholding a deed by contingent remainderman and his "living" heirs, has lost favor with the Court in some recent decisions. Rights of riparian owners in floatable stream, 116—731. Judges giving opinions as to term of office, 64—785.

Burke's "Reflections on French Revolution."

Connor, R. D. W., "Ante-bellum Builders of North Carolina."

Bryce's "American Commonwealths."

Blackstone, Vol. I, Feudal System.

Sprunt's "Chronicles of the Cape Fear."

Battle's History of the Supreme Court, 103 N. C. Reports.

Morley's Recollections.

Connor & Cheshire's "North Carolina Constitution."

Mordecai's Law Lectures.

"Two Centuries Growth of American Law."

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PRESIDENT AYDLETT: The second speaker is one of the strongest and most prominent lawyers of our State, Hon. T. T. Hicks, of Henderson, who will address us on "The Supreme Court of the Future."

THE SUPREME COURT OF THE FUTURE

By THURSTON T. HICKS.

Mr. President, Ladies and Gentlemen:

The time that is past and the time to come are equal in length and are separated by the moment we call the present. We know so much more of the past than of the future that it will require much less time to predict than to narrate.

While Sir Walter Raleigh was confined in the Tower of London awaiting execution, and writing his History of the World, he saw from his window an affray in the courtyard below, which ended in the stabbing and killing of a man. Talking of the occurrence afterward to the governor of the prison, Sir Walter was surprised to find that all his ideas as to what happened, all his deductions from what he had seen, were utterly at variance with the facts. "Alas!" sighed the world-famous man, "If I am so inaccurate as to what passes before my eyes, how can I hope to be accurate in the 'History of the World' I am writing?"

For the last hundred years the lawyers of North Carolina, with absolute knowledge of the facts, have puzzled their brains to determine in advance what the Supreme Court would do in each of the thousands of cases that have been before it. A large majority of them have proven to be false prophets, for has not one side nearly always lost? And have we not often not only lost cases that we expected to gain, but also gained cases that we expected to lose?

The public policy of the State in the last hundred years has changed from within, or been changed from without, in many vital particulars. Yet the Bar Association, "by and with the advice and consent" of the Court, has directed me to foretell what kind of a Supreme Court will sit in North Carolina, with what duties and authority, and what it will do in the hundred years beginning this 4 January, 1919.



THURSTON T. HICKS

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In the performance of this task I have invoked the spirit of prophecy, and it is upon me: not any supernatural visitation. I have and use no "Thus saith the Lord" to give weight to my words. No delphic oracle inspires my tongue with ambiguous speech, made to fit in with what may hereafter occur. Neither have I donned the time-annihilating hat of Herr Teufelsdröck to enable me to see and exhibit the conditions that shall be.

If I miss the mark of my high calling, some of you are no doubt wise enough to know it today, but you will not file dissenting opinions. For this occasion I have the only authoritative record guess as to this Court's future. If the sequel proves me to be a false prophet, none of you or of those now living will be here to witness my failure at the *fin de siècle*.

Modern vaticination takes its cue from Patrick Henry's famous interrogation: "How shall we judge the future except by the past?"

My success upon this historic occasion will depend upon whether I have rightly interpreted the nature of our foundations, and the meaning and quality of the structure already begun and in course of erection, known as North Carolina.

One must understand what has been and what is, to be able to determine with reasonable probability what will be. Would that I might be able to interpret truly, through the eyes of the present, by the light of our past, the hopes of the future, in such manner as to assist to some extent at least in the realization of the State's high aim to produce and maintain a happy, prosperous and progressive commonwealth, whose brightest ornaments shall be the magistrates who will minister continually in this its great temple of justice.

The unknown quantities in the problem to be solved are how much health, wealth, common sense and culture the people of this State will have in the next hundred years. Great States have great courts and great men to preside in them and interpret greatly their purposes and their laws. Since law is the perfection of reason, the progress and power to be attained by the administrators of the law in the years to come will depend upon the development of the character, intelligence, good sense and reasoning faculties of the people. Like people like priests. Like lawyers like courts.

Until the year 1868 the dead hand of the past held us fast. In that year first, by what means you all do know full well and against what

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opposition it became and has since been an indictable misdemeanor for the county commissioners to fail to provide at the public charge a free public school for four months in every year within convenient distance of all the youth of the State. The effect of this law upon the State has been greater and better than any other single mandate or influence in the last fifty years. With the exceptions of the abolition of slavery and the sale of whiskey, it was the greatest legal event since the keels of Amidas and Barlow first grated upon our sands.

When our Supreme Court was just fifty years old "Free Public Schools" came for all and for all time. As this Court reached its century mark, the mighty people, without a single appeal from the hustings, voted almost unanimously to extend, by taxation, the annual school term to six months. After waiting forty-five years, the Legislature acquired the courage to put into operation the provisions of article 9, section 15, of the Constitution of 1868, compelling school attendance of all children of sufficient mental and physical ability. These schools and the instruction in hygiene required by the law have and will undoubtedly discover many sound minds in sound bodies to whose eyes "Knowledge her ample pages, rich with the spoils of time, will sure unroll," developing men and women capable of supplying all the great needs of the great State.

If "all things are possible to him that believeth," all things are probable, yea, reasonably certain, to him that knoweth.

The Supreme Court of the State starts its second century freed from the incubus of having to try the titles to admit human beings, the administration of corporeal punishment and the determination of the sizes of the switches with which husbands may castigate and flagellate their wives. It starts with the pleasing prospect that it will construe but few more instruments exemplified with the *signum* of the holy cross instead of the sign manual; and that in this cycle the superstition will disappear that truth will more probably be uttered if the lips of the utterer be first brought in contact with a book. And this great Court's prospects of great power and usefulness are greatly enhanced by the fact that from and after the first decade of its second century, the right to vote and hold office will no more depend upon the sex of the citizen than the duties of earning a living and paying taxes have depended upon sex in the last thousand years.

Many good people among us who know more than your prophet on

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many subjects think woman suffrage "the abomination of desolation which was spoken of by Daniel the prophet." They seem to think women voters and officeholders will wear spurs and big black beards; will let all the babies die; will cease to bear children, keep house and make home attractive, and will devote their time to politics, mostly "of the ward type." These prophets of evil have another think coming. They will see the electorate greatly improved and its quality reflected in all the offices. I once rode in a buggy sixteen miles with a sixteen-years-old boy. Just before reaching the end of the journey he broke a long silence to ask me: "How many men's words does it take to overcome one woman's word in court?" I believe that this great reform will cause battles between men and women in courts to be fought on more nearly equal terms. Who can doubt that the average son will have more balance, judgment, and *viridus vis animi*, when the average mother extends the sphere of her thinking from "the washing of cups and pots," sweeping and picking chickens, to questions of statecraft, taxation, the police power, the tariff, finance, and the freedom of the seas? Instead of the exercise of the suffrage dragging women down it will enable her to drag the State up.

Some politicians have cause to oppose woman suffrage, because it will answer for them the prayer of the Psalmist: "Make me to know mine end and the measure of my days."

Our Supreme Court will in the years to come cease to be annoyed with such questions as who is the owner of a window sash worth a dollar and fifty cents; or whether a chattel mortgage for twenty dollars on an old mule may be given in evidence since it was not listed for taxation as a solvent credit.

I am of the opinion, upon the principle "*de minimis non curat lex*," that no case will be appealable to the Supreme Court of the future unless it involves more than a hundred dollars value. This would certainly discourage litigation about trifling matters that "cost more than they come to"; encourage people in their efforts to adjust small differences, and give the Court more time to devote to "the weightier matters of truth and judgment."

The Supreme Court will not much longer have the authority or the painful duty to declare that a human being shall be put to death by law in North Carolina. Revenge in the law will give place to reform. Will

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the borders of our fair State fifty years hence contain a single man, not to say a majority, who will admit that he or they are willing to be influenced in a matter of life and death by a spirit of vengeance or retaliation? Will not the conscientious men and women who meet to celebrate the next centennial of this Court blush, as they turn these pages, to think that their ancestors in 1919 condemned human beings to death by law in North Carolina? In this, if in nothing else, may they honor me as "the prophet of the coming time."

Is it true that "the cure for the ills of a democracy is more democracy?" Is it true that in these last days we have destroyed the principle of kinship among men and made "democracy safe for the world" and for North Carolina? That all the war laws we now endure will be repealed, and that the people will be free to grow in culture and in wealth and worth? And if so, will the world-old controversies concerning frauds and torts and breaches of contract largely disappear from our dockets? Will not the Government own the public utilities, and all questions of negligence and damages be adjusted by schedules arranged by act of Congress? The titles to all lands will be settled, except the few ever-recurring questions of boundary. But litigation arising out of injuries on highways, in motor vehicles, and in aerial and water navigation will wax more and more in the century before us.

"New occasions teach new duties—
Time makes ancient good uncouth."

Questions concerning wages and price-fixing, hours of labor, child labor, irrigation, water supplies, and those arising out of the dissemination of odors in manufacturing, upper and lower riparian rights, the occupation and conveying of the upper and lower stories of houses, the communication of diseases: these and the like, in a population of ten millions of people, together with race segregation laws that will be sure to arise again and again, will rouse into action the mightiest powers of our mightiest judges.

May some Daniel come to judgment among us in the next century and show this people how two races in the same State, though they may not be agreed, may yet walk together in justice and in peace.

We speak of the supreme powers in a State prescribing the law. We

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have heard much lately of the cannon, the aeroplane, the submarine, the food supply and man-power as "the last arguments to which kings resort." (Alas for our maxims since there are to be no more kings!) Those are words and phrases of and for the people. Lawyers know that the minds of the Supreme Court judges are the supreme power. Long may this be so in our good land, where "reason is the life of the law."

The Colonial Assembly, followed by the State Legislature (Revisal, 932), vested in the Supreme Court by indirection, the right to determine what was or is the common law, and what parts of it not repealed or enacted by the Legislature were and are good for the people of North Carolina and what parts are not good for us. This has tended to encourage the enactment and repeal from time to time of judge-made law or judicial legislation. This kind of law will, we think—and the wish may be father to the thought—be less and less in fashion with the Supreme Court until it falls into disuse.

If public schools and the press and, to quote Hamlet, "the occurments that have more and less solicited" recently shall so elevate our people that lynchings and riots shall cease, that conservatism and property shall be in no danger from hasty and ill-considered legislation, we may cease to need a written constitution. That will be true when democracy becomes absolutely safe for our State. Then the oath to support the Constitution will no longer be required, and the judges will cease to exercise the high prerogative heretofore exercised of declaring acts of Legislature unconstitutional. I have no assurance that we will adopt this course in the next century of this Court's life.

The growth of our population and increase of judicial work will in the next century increase our Supreme Court judges to nine, two or three of whom will no doubt be women, whose presence will continually suggest the transformation since 1915, when it was held in this very tribunal that our laws were so written that females were disqualified to be even notaries public!

In the century just passed many eminent minds adorned this judgment seat. None greater perhaps than those who now serve here. For have these not, in addition to the results of their own labors and research, those of all their predecessors canned and preserved for instant use? Are not our judges and lawyers in a peculiar sense "the heirs of all the ages in the foremost files of time?" And so will our successors be.

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The last semi-centennial of this Court was marked and honored by the abolition in this State of the death penalty in more than forty cases, and more than forty kinds of civil actions, as well as all distinctions between actions at law and suits in equity and the forms thereof. The principles upon which all actions are determined abide.

An old common-law lawyer said of equity, "It is a roguish thing. For law we have a measure. Equity is according to the conscience of him who is chancellor, and as that is longer or narrower, so is equity. It is all one as if they should make the standard for the measure we call a foot, a chancellor's foot. What an uncertain measure would this be? One chancellor has a long foot, another a short foot, a third an indifferent foot. It is the same thing in the chancellor's conscience."

An equity lawyer spoke of the judicial discretion of the judges of the law courts: "The discretion of a judge is the law of tyrants: it is always unknown: it is different in different men. It is casual and depends upon constitution, temper and passion. In the best it is oftentimes caprice; in the worst it is every vice, folly and passion to which human nature is liable."

No doubt many lawyers in the past—and litigants, too—(I am not speaking of the present) have felt the force of those observations, and have appreciated the feelings of Cardinal Wolsey when Judge Shelley delivered to him the mandate of that model of virtue, mirror of wisdom, and fountain of justice, King Henry VIII., in regard to surrendering his estates: "Master Shelley, you shall report to the king's highness that I am his obedient subject and faithful chaplain and bondsman, whose royal commandment and behest I will in no wise disobey, but most gladly fulfill and accomplish his princely will and pleasure in all things and in especial in this matter, inasmuch as ye, the fathers of the laws, say that I must lawfully do it. Therefore I charge your conscience and discharge mine. Howbeit, I pray you show his majesty from me that I most humbly desire his highness to call to his most gracious remembrance that there is both a heaven and a hell."

Lawyers and litigants of the future in North Carolina will not, if they ever did, entertain any such thoughts as I have quoted of and concerning the judges. The Witen-a-gamote—the council of wise men and women, who will compose this great tribunal after democracy shall be made safe for the world—will approach every subject presented with

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absolute knowledge of the law without any latitude or range for judicial discretion or the longitudinal conscience of the chancellor, and a true and scientific conclusion reach in accordance with this then exact science.

And the people will regard the judiciary as Sir Thomas More, author of *Utopia*, regarded and said of himself when he was Lord Chancellor of England: "But this one thing I assure thee, on my faith, but if the parties will at my hands call for justice and equity, then, although it were my father, whom I reverence dearly, that stood on the one side and the devil, whom I hate extremely, were on the other side, his cause being just, the devil, of me, should have his right." So will it be said of our judiciary, as it was said by another of the judiciary of England: "No British judge can be swerved a hair's breadth from the line of duty by any earthly consideration."

The system of selecting judges having veered from appointment by the sovereign during his will and pleasure, or during good behavior, to nominations by party convention, caucus or primary, and at one time apparently being about to subject the judges to recall by the popular vote for unpopular decisions, has another turn of fortune's or time's wheels before it. No autocrat or party caucus or primary or convention will in the future name the judges. Politics, which in practice has been defined as "a systematic organization of hatreds," will cease to have any part in the selection of judges, but they will be selected by the association of lawyers without regard to party affiliations, or will be members of all political parties.

It has been actually computed by an enterprising law publisher in the last few years that a majority of the cases decided by the appellate courts of America "went off" on questions of practice and procedure. Let us hope that the Supreme Court of the future will, with or without the aid of the lawyers, find a way to make every case turn on its real legal merits; that "harmless error" and long dissenting and concurring opinions, costing so much time and money to write and print and read, will be things of the past; that a clear, short statement of the law in a few sentences and the reason on which it is based in a few others, with brief and lucid headnotes and indexes, will be the rule of the Supreme Court of the future.

There will be no undue veneration for what somebody else has said or thought in a bygone age, nor any reverence for precedents, but a clear

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compelling knowledge of which is the better reason, and a support of it that will be all-convincing.

Hugo Munstenburg suggested that the psychologists of the future might invent a device by which the truthfulness of the words of a witness may be tested with unerring accuracy. And who knows but that the womb of time shall bear for the use of the servitors in the temples of justice real touchstones and mete-wands that will strike to the heart of the case and bring out truth and justice every time: so clear and shining that the losing party can see it, and not be thereby reminded of his hope that there is a heaven and also a hell.

The world war has just ended. It was fought by the victors, as it was said, to put an end to war for all time to come. We are told that their purpose has been accomplished; that all men will henceforth know how to govern themselves. This nation has had the first opportunity to test the truth of the statement by governing itself while its executive head has gone to assist in arranging for the first "parliament of man and federation of the world." The fangs of hate that caused the world to war have been drawn. Man will no longer be conceived in sin and brought forth in iniquity. Even peace with victory, we are now taught, will not again, when the vanquished have recovered strength, start the black horse and his rider on their march of death.

The world-old maxim "*Inter arma leges silent*" is to drop out of time and be forgotten, for the days to come will furnish no facts to prove its truth. Never again, let us hope and pray, will the laws be silent, but ever speaking and declaring rules for every condition that may arise. Old Jack Cade's prophecy of the good time to be ushered in by killing all the lawyers will never come. The triumph of reason over unreason in courts of justice and in the minds of men will be the supreme perpetual purpose of the race. Thus we seek after God and think His thoughts after Him. So long as there may be two opinions about a matter and different points of view and angles of interest, so long will students of law investigate and contend concerning its meaning, and great judges will declare which is the better reason. The progress and development of the human intellect is unlimited. The law will be found, as the rule of right, for every new condition that may arise.

So we see the State in the century beginning today making great progress in wealth, in population, in intellect, in education, and in



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character. And the larger minds that will be needed for action on this larger stage, before this larger audience, will come forth out of our midst and fill the measure of the new time's demand.

Great men are the greatest and best gifts of God to His earth. Let us hope that in the cycle beginning today the God and father of us all will bring forth on this planet, in our beloved niche of it, even in North Carolina, one great man to lead His people; and whether prophet, priest, or king, or judge, or by whatever name he may be known, may they follow him to higher and higher levels.

PRESIDENT AYDLETT: The third speaker on this occasion is Mr. Marshall DeLancey Haywood, of Raleigh, who will now address us on the Subject of the "Officers of the Supreme Court."

THE OFFICERS OF THE COURT, 1819-1919.

By MARSHALL DELANCEY HAYWOOD.

Gentlemen of the Bench and Bar, Ladies and Gentlemen:

Honored by an invitation from the North Carolina Bar Association to appear before this assemblage today and speak of the "Officers of the Court"—Clerks and Marshals—who have served in bygone years, I am here to perform, as best I can, the duty thus assigned me.

Seven Clerks and four Marshals make up the list. The Clerks have been William Robards, John L. Henderson, Edmund B. Freeman, Charles B. Root, William H. Bagley, and Thomas S. Kenan; also James R. Dodge, Clerk of the Summer sessions formerly held at Morganton. The Marshals have been Colonel John T. C. Wiatt, James Litchford, David A. Wicker, and Robert H. Bradley.

CLERKS

WILLIAM ROBARDS, Clerk

On January 4, 1819, at the first sitting of the Supreme Court, it elected WILLIAM ROBARDS, of the old town of Williamsborough, in Granville County, to the office of Clerk of the Court. Mr. Robards was a native of Goochland County, Virginia, born November 20, 1779, and was brought by his father (James Robards) to North Carolina when

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quite young. Before he became an officer of the Supreme Court he had already seen something of public life, having sat in the North Carolina House of Commons as a representative of Granville County at the sessions of 1806 and 1808. He was deeply interested in the cause of general education, and was associated with Chief Justice Henderson in conducting a law school at Williamsborough. He was also a trustee of various educational institutions—of the Williamsborough Academy, of the Oxford Academy, and of the University of North Carolina, his term in the last mentioned capacity extending from 1827 until his death.

Though the objects for which it labored did not take form in the shape of a public institution until a score of years later, a Society for Establishing an Institution for the Deaf and Dumb was organized in North Carolina as early as 1827, and was incorporated by chapter 64 of the Laws of 1827-28. Mr. Robards was a member of this society, and also served on its Board of Directors.

After his election as Clerk of the Supreme Court in 1819, Mr. Robards occupied that position until he was elected State Treasurer, or "Public Treasurer," as it was then called, by a joint ballot of the General Assembly on December 14, 1827. Immediately after this, he resigned his office with the Supreme Court, and entered upon his new duties. He filled the office of Public Treasurer with marked ability for several years until the end of 1830, his successor being elected on the 4th of December in that year. He thereupon returned to his old home in Granville County, and there spent the remainder of his life.

The wife of Mr. Robards was Ann (or "Nancy") Keeling Satterwhite, daughter of Thomas Satterwhite, and a lady of wide connections in Granville County among such well-known families as those of Williams, Bullock, Henderson, Burton, Ridley, etc. Mr. Robards left a numerous posterity, whose members have well measured up to the good name which he bequeathed to them. These, for the most part, still live in Granville and Vance counties (Vance being a part of old Granville), and some have removed to Tennessee, the Gulf States, and other localities throughout the Union.

In his religious affiliations Mr. Robards was an Episcopalian, and was a vestryman of the historic St. John's Church at Williamsborough. He died on the 17th of June, 1842. I cannot better conclude this sketch of his life than by quoting a tribute to his memory, which appeared in the

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Raleigh Register of June 24th, a few days after his death. In part, that paper said: "He suffered much from a long and severe illness, which he bore with a degree of fortitude never surpassed. Of the character of the deceased it would be useless to speak to those who knew him well. All will bear testimony to the magnanimity, the noble disinterestedness, and unceasing patriotism which characterized his whole life. As a neighbor, he was obliging and hospitable; as a friend, ardent and constant; as a citizen, just and ready in the performance of every duty. No one in distress ever appealed to him in vain when, by any exertion or sacrifice of his own, that distress could be alleviated or removed. He filled many high public offices during life, the duties of which he performed with a fidelity seldom equaled, and for which he received the highest commendations of his fellow-citizens. By the State generally, and particularly by his neighborhood, will his death be felt as a heavy loss. Nor were the incidents of his death less gratifying than his life was useful and upright. He professed confidence in the truth and a firm reliance on the faith of the Christian religion."

JOHN LAWSON HENDERSON, Clerk

JOHN LAWSON HENDERSON was the second Clerk of the Supreme Court, elected in January, 1828, to supply vacancy caused by the resignation of William Robards. Mr. Henderson was a younger brother of Chief Justice Leonard Henderson, and a son of Judge Richard Henderson, who figured prominently in public life prior to the Revolution and during that war.

John L. Henderson was born in Granville County in the year 1778, and graduated from the University of North Carolina in the Class of 1800. He entered the legal profession, but never attained a degree of success therein in any way equal to his two distinguished brothers, Leonard and Archibald. He made his home in Salisbury, and was borough representative from that town in the North Carolina House of Commons at the sessions of 1815, 1816, 1823, and 1824. In 1827 he was appointed Comptroller of State, an office (later abolished) similar to the present post of State Auditor, being chosen to fill an unexpired term. He was a candidate before the next General Assembly for reelection, but was defeated by James Grant, of Halifax. About this time (January, 1828) he was elected Clerk of the Supreme Court to fill

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vacancy caused by the resignation of Mr. Robards, and retained that office throughout the remainder of his life.

Mr. Henderson never married. In the *Papers of Archibald D. Murphey*, published by the North Carolina Historical Commission, is an amusing letter from Judge Murphey, dated December 15, 1809, wherein the writer tried to work a reformation in his friend, in part saying: "I rejoice to see my friends get married. I always regard the stock of human happiness as thereby increased. Whilst so many young men of your acquaintance are thus adding to their happiness, feel you no wish to add to yours? In the circle in which you move, can no one be found whom you love, and whose hand and heart you can consider as the richest treasure of this life? I hope there is. Get married, dear friend, and get a wife of good sense." Henderson, alas! never got a wife, either with or without "good sense."

Mr. Henderson died in office on the 11th day of July, 1843. The *Raleigh Register*, of July 14th, contained an obituary of the characteristic brevity of that day, which said:

"DIED.—In this city, of congestive disease, on Tuesday last, in the 66th year of his age, John L. Henderson, Esq., Clerk of the Supreme Court of North Carolina. Mr. H. resided in Salisbury, but was here in attendance on the Court now in session. He was buried with Masonic honors."

The funeral of Mr. Henderson was conducted from Christ Church, in Raleigh, on the day following his death, by the Rev. Richard S. Mason, D.D., Rector of the parish.

EDMUND B. FREEMAN, Clerk

On July 13, 1843, EDMUND B. FREEMAN was elected Clerk of the Supreme Court, *vice* John Lawson Henderson, who had died two days earlier. Before becoming Clerk, Mr. Freeman had served as Deputy Clerk under Mr. Henderson, and hence was in the service of the Court for a longer period than the twenty-five years in which he held the higher position.

Mr. Freeman was born in Falmouth, Massachusetts, on the 8th day of September, 1795. He was a son of the Rev. Jonathan Otis Freeman, D.D., a distinguished Presbyterian clergyman, who did much educational work in North Carolina, teaching at various points throughout

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the State. This clergyman was a brother of the Right Rev. George Washington Freeman, D.D., for some years rector of Christ Church, Raleigh, and later Missionary Bishop of Arkansas and the Southwest. Brigadier-General Nathaniel Freeman, of the Massachusetts militia in the War of the Revolution, was the father of the Rev. Dr. Freeman and of Bishop Freeman, and hence was the grandfather of Edmund B. Freeman.

When he was a ten-year-old child, Edmund B. Freeman was brought to North Carolina by his father. After completing his general education, he studied law and was duly licensed, but the probability is that he never engaged in active practice. For a while, in early life, he edited the *Compiler*, a newspaper published at the town of Halifax. For one or more terms of the Legislature he was Reading Clerk of the House of Commons, and was Principal Clerk of the State Constitutional Convention of 1835. From his election as Clerk of the Supreme Court in 1843 until his death, he was one of the most conscientious and capable officials who ever served any court in North Carolina. His heart, as well as his brain, was put into his work; and there were countless gentlemen of both the Bench and Bar who profited by his knowledge and experience. Alluding to Chief Justice Ruffin, in an oration on that great jurist, the late Governor Graham said: "The precision and propriety of entries, in every species of procedure, were brought to a high state of perfection mainly by his investigations and labors, in conjunction with those of that most worthy gentleman, and modest but able lawyer, Edmund B. Freeman, Esq., late Clerk of the Supreme Court."

Mr. Freeman served in his office as Clerk of the Supreme Court until he passed from his earthly labors. The 30th of June, 1868, was the day set for the Court, under its old form, to pass out of existence, and for the Court under the new State Constitution to take over its duties; and on that very day the old Clerk died, thus ending his labors with the final adjournment of the old Court whose history had been so closely entwined with his own life. An entry on the Minute Docket, under date of June 30th, says: "At the hour of 2 o'clock, p. m., on this day, Edmund B. Freeman, the ancient Clerk of this our Supreme Court, expired." On the next day (July 1st) Attorney-General Sion H. Rogers announced Mr. Freeman's death in Court (convened for memorial services), and offered a set of resolutions on behalf of the gentle-

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men of the Bar, expressive of the esteem in which they held the late Clerk, both personally and officially. Replying, Chief Justice Pearson said:

"Gentlemen of the Bar: The Judges of the Supreme Court fully concur in your resolutions. We have known Edmund B. Freeman long and intimately. In his private associations, he was kind and agreeable, and in the duties of his office 'no one could him excel.' He was trained to be a clerk from infancy, and was fond of the vocation. He displayed great ability, not only in accuracy of detail, but also in grasping the scope of complicated cases whilst stating accounts. His integrity and entire fairness in discharging his duties no one ever called in question, and he earned and is entitled to the distinction of having been a 'model clerk.' His attachment to the *Old Court* was so strong that on several occasions he said to the Judges: 'I cannot outlive the Court, or work in any other traces!' That the Court should have *died* on the same day with its Clerk is a coincidence that is remarkable, and to theorists may form a topic of discussion. The Court orders that the resolutions be entered upon the records, and that a copy thereof be transmitted to Mr. Freeman's family."

On this same old Minute Docket is given a poem written in memory of Mr. Freeman by Mrs. Mary Bayard Clarke. Part of this was quoted by Dr. Battle in his History of the Supreme Court printed in the 103d North Carolina Reports. The entire poem is as follows:

The old Clerk sits in his office chair—
His head is white as snow,
His sight is dim, and his hearing dull,
And his step is weak and slow;
But his heart is stout, and his mind is clear,
As he copies each decree,
And he smiles and says, as the Judges pass,
" 'Tis the last Court I shall see."

But he lingers on, till his work is done,
To pass with the old *régime*,
When he lays his pen with a smile aside
To stand at the Bar Supreme;
For the old Clerk died with the Court he served
For forty years, save three,
And breathes his last as the Judges meet
To sign their last decree.

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The Pointed Sword at his Naked Heart*
With a child-like smile he views,
For his spirit glows with the fervid heat
Good deeds alone diffuse,
For like his Lamb-skin Apron white*
Is the life that he had led,
And Sinai brings before the Court
No charge against the dead,
While Calvary unbars the gates
Of Heaven, and entrance gives
Unto his soul, which meekly saith,
"I know my Redeemer lives."

Mr. Freeman was twice married. His first wife's maiden name was Mary McKinney Stith. She died January 25, 1835. By her he had an only daughter, Emily, who became the wife of the late Hampden S. Smith, and left several children, one of these being Hampden Freeman Smith, former City Clerk and a bank officer in Raleigh, but now residing in New York City. The second wife of Mr. Freeman was Mrs. Elizabeth Ellis Foreman, *née* Williams, widow of William Foreman, of Pitt County. He left no children by that wife, who died November 11, 1848.

Mr. Freeman was a deeply religious man and an Episcopalian in his religious affiliations, holding his membership in Christ Church, Raleigh, of which his uncle was rector for so many years. He was also a Mason, and served as Junior Grand Warden of the Grand Lodge of North Carolina from December 11, 1833, to December 5, 1834, and from December 7, 1835, to December 14, 1836.

CHARLES BOUDINOT ROOT, Clerk

The immediate successor of Mr. Freeman, as Clerk of the Supreme Court, was CHARLES B. ROOT, of Raleigh. Mr. Root was elected Clerk *ad interim* for a term of six months, beginning July 1, 1868, and ending January 4, 1869. He and Mr. Freeman were close friends, and they married cousins. It was largely for the purpose of winding up the office accounts of the deceased Clerk (at the request of his daughter) that Mr. Root accepted the temporary appointment tendered him by the Court. The Deputy Clerk *ad interim* was Johnstone-Jones, later Adjutant General and now a resident of California.

*Masonic symbols.

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Like his predecessor in office, Mr. Root was a New Englander by birth, but spent sixty-six of his eighty-four years in Raleigh. He was born in the town of Montague, Massachusetts, on the 31st day of October, 1818. His paternal descent ran through many generations of sturdy and prosperous New England ancestors back to Thomas Root, who came to America in 1637.

Along with the other children of Elihu Root, of Montague, Charles B. Root received good educational training, and was a student at the academy in Greenfield, Massachusetts. Leaving that institution, he went to New York City, but did not remain long, and removed to Raleigh in 1837. Before leaving New York he had been promised employment by a Raleigh jeweler, Bernard Dupuy, with whom he served some time, and whose business he later bought. In 1860, Mr. Root sold his jewelry establishment, and never thereafter engaged in mercantile pursuits. In the early part of the War between the States he was Mayor of Raleigh (serving without compensation), and for eighteen years following the war was president of the Raleigh Gas Company. In the course of his life he was a member of the Board of Aldermen of the city of Raleigh and a member of the Board of Commissioners of Wake County, being chairman of the latter body for some time. From 1884 up to the time of his voluntary retirement, not long before his death, he was Tax Collector of the city of Raleigh. For a long time he held a commission as magistrate in Wake County, this giving him the appellation of "Squire" Root, by which he was known to the citizens of his community. Close attention to the duties of his various stations, and unquestioned integrity in public and private transactions marked his course through life.

In 1848, Mr. Root married Anna Freeman Gales, daughter of Weston R. Gales, of Raleigh. Mr. Gales was a gifted journalist, who succeeded his father, Joseph Gales, as editor of the *Raleigh Register*, and was a brother of Joseph Gales, Jr., who wielded a potent influence in the politics of the nation as editor of the *National Intelligencer*, in Washington City. By this marriage, Mr. Root left a son, Charles Root, now cashier of the Raleigh Savings Bank, and a daughter who married the late Dr. Vines E. Turner, of Raleigh.

"Old Squire Root," as he is still affectionately remembered by the people of Raleigh, was gentle, tender-hearted, and courteous, charitable to the poor, and considerate of the feelings of every one. He passed

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away in the eighty-fifth year of his age, on the 7th day of May, 1903. His funeral was conducted from Christ Church, of which he was a zealous member and consistent communicant.

WILLIAM HENRY BAGLEY, Clerk

As already stated, the commission of Mr. Root as Clerk *ad interim* expired on the 4th day of January, 1869. Two weeks later, on January 18th, Major WILLIAM H. BAGLEY, of Raleigh, was elected Clerk of the Supreme Court for a term of eight years; and by subsequent reëlections, held that position until his death, a little more than seventeen years thereafter.

Major Bagley was born in Perquimans County, North Carolina, on the 5th day of July, 1833, and was a son of Colonel Willis Bagley, a well-known citizen of that section of the State.

In 1852, before he became of age, William H. Bagley was elected Register of Deeds of his native County, and held that position for several years. In 1855, he removed to Elizabeth City, in the adjacent county of Pasquotank, and there engaged in journalistic work as editor of the *Sentinel*. He also studied law, and was licensed to practice in 1859. In 1860, he was associated in the editorial management of another paper, the *State*, with James W. Hinton.

Upon the outbreak of the War between the States, Mr. Bagley entered the Confederate service, and was commissioned First Lieutenant of Company A, Eighth North Carolina Regiment, on May 16, 1861. This regiment being sent to join the forces engaged in the defenses around Albemarle and Pamlico Sounds, Lieutenant Bagley was engaged in numerous actions in that vicinity until February 8, 1862, when he was captured by Burnside's expedition against Roanoke Island, where he was stationed. In recounting this event, the historian who prepared the sketch of the Eighth Regiment for Chief Justice Clark's great compilation entitled *North Carolina Regiments, 1861-65*, says:

"After the surrender of the island on the 8th of February, we were held in camp as prisoners of war about two weeks, when we were conveyed by steamers to Elizabeth City, paroled, and sent home by way of the Dismal Swamp Canal and Portsmouth. Whilst prisoners in the hands of the enemy, we were well treated. Of course we were closely guarded, but no insults were offered. During the first and second weeks of September, 1862, the men having been exchanged, the regiment reassembled."

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Shortly after the Eighth Regiment reassembled, as just mentioned, Lieutenant Bagley was promoted to the rank of Captain, October 25, 1862, and assigned to his former company. He probably did not rejoin his company immediately, as about this time he had been elected State Senator from the First Senatorial District, composed of the counties of Pasquotank and Perquimans.

On April 15, 1864, Captain Bagley was commissioned Major of the Sixty-eighth Regiment. He did not remain with this regiment long, however, but resigned on June 11th in the same year. He again became a member of the State Senate in 1864.

In July, 1865, President Johnson appointed Major Bagley to the post of Superintendent of the United States Mint at Charlotte, but the recipient of this appointment could not qualify as he was unable to take the "iron-clad oath" alleging that he had borne no part in what was then officially designated "the late Rebellion."

On December 15, 1865, Jonathan Worth became Governor of North Carolina, and remained in office until turned out several years later to make room for a "Provisional Governor" appointed by the President. Major Bagley was appointed Private Secretary by Governor Worth, and served in that capacity for some time. In 1866, he married the Governor's daughter, Miss Adelaide Worth. This venerable lady survives her husband, and now resides with her two unmarried daughters in Washington City. One of the children born to this marriage was Ensign Worth Bagley, killed in the War with Spain, and in whose honor a statue now stands in the Capitol Square at Raleigh. William Henry Bagley, second son, is engaged in newspaper work. A third son is Commander David Worth Bagley, of the Navy, who saw active service in the war just closed. One of Major Bagley's daughters is Mrs. Josephus Daniels, herself a patriotic welfare worker in connection with the late war, and wife of the present Secretary of the Navy, whose labors have brought the sea forces of our Government up to a scale of magnitude and efficiency never dreamed of before.

Major Bagley was a man of handsome and distinguished appearance, and enjoyed a good measure of health up to the month of November, 1885, when he suffered an attack of illness from which he never recovered, and which resulted in his death a few months later, despite treat-

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ment by the most eminent members of the medical profession of both Raleigh and Baltimore.

No sketch of Major Bagley's life would be complete without reference to his connection with the Independent Order of Odd Fellows, in which fraternity he held the highest honors. He was initiated into this order in 1857 as a member of Achoree Lodge, No. 14, of Elizabeth City. In 1865, he transferred his membership to Seaton Gales Lodge, No. 64, of Raleigh, and became a member of McKee Encampment, No. 15, in the same city. He represented the Grand Lodge of North Carolina in the Grand Lodge of the United States (afterwards known as the Sovereign Grand Lodge) from 1874 until 1886, and was Grand Master of the Grand Lodge of North Carolina from May, 1873, until May, 1874.

The death of Major Bagley occurred at his home in Raleigh on the 21st day of February, 1886, and caused wide regret. The *News and Observer* (then edited by Captain Samuel A. Ashe) said: "Major Bagley was held in very high esteem here, and the grief at his death is deep and sincere." In the Journal of Proceedings of the Grand Lodge of Odd Fellows, a memorial of him declared: "Outspoken at all times, always having the courage of his convictions, steady in friendship, firm in his ideas of right, yet at all times courteous, considerate, and amiable, he acquired and held unto the end the warm and affectionate regard of his brethren."

The funeral services of Major Bagley were held on February 23d from the First Presbyterian Church in Raleigh, being conducted by the Rev. John S. Watkins, D.D., assisted by the Rev. William C. Norman, pastor of the Edenton Street Methodist Church. In attendance were the officers of the State Departments, the Justices and officers of the Supreme Court, the Raleigh Bar in a body, a numerous representation of Odd Fellows, and a large concourse of citizens.

THOMAS STEPHEN KENAN, Clerk

COLONEL THOMAS S. KENAN, whom we all remember so well, was elected Clerk of the Supreme Court on the 1st day of March, 1886, to fill vacancy caused by the death of Major Bagley, and qualified two days later.

Before his election as Clerk, Colonel Kenan had won high reputation both as a soldier and lawyer. He was born on the 12th day of February,

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1838, at the county-seat of Duplin, Kenansville, a town named in honor of his family. He was the eldest son of a prominent citizen of that section, Owen R. Kenan, member of the Confederate Congress. Owen Kenan's father, Thomas Kenan, member of the United States Congress, from 1805 to 1807, was the son of Colonel James Kenan, an active and courageous officer of the Revolution.

After a preparatory education at Old Grove Academy, in Kenansville, and at the Central Military Institute, at Selma, Alabama, Thomas S. Kenan entered Wake Forest College and completed his freshman year there. He left in 1854 to enter the University of North Carolina. He graduated with the degree of A.B. from the University in 1857, later being given the degree of A.M. He studied law at Richmond Hill under Chief Justice Pearson, and located for the practice of his profession at Kenansville in 1860. Closely following this came the outbreak of the War between the States. Mr. Kenan promptly volunteered his services to the Confederate Government, and was chiefly instrumental in raising the Duplin Rifles, of which he was elected captain. This company was later made a part of the First or "Bethel" Regiment, then assigned to the Second Regiment, and eventually it became a part of the Forty-third Regiment. Colonel Kenan bore an honorable part in many hard campaigns and bloody battles until he was badly wounded while leading a charge at Gettysburg. On the next day he fell into the hands of the enemy, while being carried to the rear in an ambulance train, and was sent to the military prison on Johnson's Island, in Lake Erie. There he was confined until 1865, when he was released on parole. The war ending about this time, he was never exchanged.

Immediately after the close of the war, Colonel Kenan was elected a member of the State Senate from Duplin County, serving at the sessions of 1865 and 1866. In 1868, the Democrats of his district nominated him for a seat in Congress, but he was defeated.

He removed from Kenansville to Wilson in 1869, and became Mayor of the latter town, serving from 1872 until 1876. In 1876, when the Democratic party was searching out strong men to make up the ticket for that year and carry on the campaign under the leadership of Vance, Colonel Kenan was nominated for Attorney-General, was duly elected, and held that position eight years, during the administration of Governors Vance and Jarvis, from January 1, 1877, until January 21, 1885. About a year after the expiration of his term, he was elected Clerk of

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the Supreme Court, as already mentioned, and he retained that office up to the time of his death, a little more than twenty-five years thereafter, on the 21st of December, 1911.

On May 20, 1868, Colonel Kenan married Miss Sallie Dortch, daughter of Dr. Lewis Dortch, a native North Carolinian residing in Mississippi. No children were born to this union.

In personal appearance, Colonel Kenan was one of the most strikingly handsome men of the generation in which he lived. An oil portrait in the Clerk's office, preserving his likeness in a realistic manner, has been presented by his family, an example which it is hoped that the descendants of his predecessors will follow by placing there portraits of Robards, Henderson, Freeman, Dodge, Root, and Bagley.

Colonel Kenan's interest in the University was deep and lifelong. He was a trustee for many years, and there was seldom a commencement that he did not attend. He lived to celebrate with the survivors of his class the fiftieth anniversary of graduation. He was an Episcopalian in religion, and a member of Christ Church, at Raleigh, for many years prior to his death. In the western gallery of this church is a handsome set of memorial windows erected in his honor. He was a member of the Masonic fraternity, and held the post of Deputy Grand Master of the Grand Lodge in the years 1877-78. He was one of the charter members of the North Carolina Society of the Sons of the Revolution, being president of that organization at the time of his death, and for some years prior thereto. He was a member of the United Confederate Veterans, and member of the advisory committee of the Ladies Memorial Association, of Raleigh. He contributed a valuable sketch of the Forty-third Regiment to Chief Justice Clark's compilation entitled *North Carolina Regiments, 1861-65*. His own purse was ever open to aid a Confederate veteran who had failed of fortune in the contest of life, and he took a deep interest in the pension legislation of the State, as well as in the Soldiers' Home at Raleigh. Yet with all of his interest in Confederate matters, there never lived a man more free from sectional bitterness, or one who had less patience with any one who strove to rekindle sectional animosity. While the war lasted he was a loyal Confederate, never flinching from the ordeals of camp, field, or prison; but after the return of peace, though disappointed of his hopes for Southern independence, he spent no time in railing at his former adversaries, but became a friend and brother of all good Americans.

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The foregoing sketch of Colonel Kenan concludes what I have to say of the Clerks who have served in the State Supreme Court at Raleigh. It is not my purpose to speak of the present incumbent, Joseph L. Seawell, who began his connection with the Court when less than fifteen years of age, as an office clerk under Major Bagley, and who well measures up to the best of his predecessors in point of efficiency. Before taking leave of the Clerks who have labored in Raleigh, however, I must say a few words of the excellent gentleman who served in the same line of work many years ago, during the time (1847-61) when the Court held a Summer session each year in the mountain town of Morganton.

JAMES RICHARD DODGE, Clerk (Morganton Division)

It is a fact now almost forgotten that the Supreme Court of North Carolina held a Summer term each year at the town of Morganton for nearly fifteen years, beginning in 1847 and ending in 1861. It was by chapter 28 of the Laws of 1846-47 that this Summer term was established, the action being taken for the convenience of the lawyers of western North Carolina, Raleigh then being almost inaccessible to those residing in that section, owing to the lack of railroads and the bad condition of the stage roads. The Court at Morganton maintained an existence until the opening of the War between the States, when it was abolished by chapter 4 (ratified September 11, 1861) of a volume of statutes entitled "Public Laws of the State of North Carolina, passed at the General Assembly at the Sessions of 1861-62-63-64 and one in 1859."

JAMES R. DODGE was the Clerk of the Supreme Court for the Morganton Division during the whole period of its existence. He was elected on the 20th of February, 1847, and qualified in open court on the first day of its session, August 2, 1847. The Sheriff of Burke County acted as Marshal.

Mr. Dodge was born at Johnstown, in the State of New York, on the 27th day of October, 1795, and belonged to a family which had been settled in America since 1629. His father, Richard Dodge, had run away from home at the age of fifteen to join Washington's army in 1778, served as a fifer until 1782, and became a Brigadier-General in the War of 1812-15. In the latter war, James R. Dodge, the subject of this sketch, acted for a while as his aide-de-camp, also serving in a company called the Albany Independent Volunteers. The wife of General Dodge,

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and mother of James R. Dodge, was Ann Sarah Irving, a sister of the celebrated American author, Washington Irving. At the home of his father, who was much given to hospitality, young James Dodge became well acquainted with many of the most noted military and naval leaders of that day.

Being resolved to seek his fortune in the South, James R. Dodge, when twenty-two years old, embarked for Charleston, South Carolina, but was destined never to reach that port. A storm so damaged his ship that she put into the port of Norfolk, Virginia, and could never be made sea-worthy again. This changed Mr. Dodge's plans. He removed to Petersburg, and spent two or three years in that city. While there, he studied law, and procured a license to practice in the State of Virginia. He came to Raleigh in 1820, and soon won the friendship and confidence of such well-known members of the legal profession as Judges Taylor, Henderson, and Hall of the Supreme Court; Ruffin, later to become the greatest of Chief Justices; Badger, Gaston, Archibald Henderson, and many others.

Legal business carrying Mr. Dodge to Stokes County, he decided to settle at Germantown, the county-seat. About the year 1823 he seems to have been a resident of Lexington, as he represented St. Peter's Church, in that town, in the Diocesan Convention of 1823 which elected John Stark Ravenscroft to the Bishopric. He removed to Wilkesboro in 1826 and remained until 1834. From that year until 1838, he resided in Lincolnton, being Solicitor of the Judicial District in which that town was located. In a brief autobiography prepared not many months before his death, Mr. Dodge (referring to his removal from Lincolnton) says: "Upon consultation with my sympathizing and truly pious wife, we retired to the banks of the Yadkin, our cottage and farm. She managed at home, and I labored night and day at Court, at Raleigh and at Morganton. At home we were always happy; care or trouble never entered our door, and these years were the happiest of my life."

The wife of Mr. Dodge, to whom he was married on the 24th of May, 1826, was Susan Williams, daughter of Joseph Williams, and granddaughter of Colonel Joseph Williams, a noted Revolutionary patriot of Surry County. The home of Mr. Dodge, "on the banks of the Yadkin," was originally in Surry County, but later became a part of Yadkin County when the latter was created out of a part of Surry in 1850. One

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of Mr. Dodge's children was the late Colonel Richard Irving Dodge, of the United States Army. Another, Miss Annie Dodge, became the wife of Captain Chalmers Glenn, of the Confederate Army, who was killed at the Battle of South Mountain, leaving several children, one of whom is ex-Governor Robert B. Glenn, now of Winston-Salem. Another son was the late Adjutant-General James D. Glenn.

Mr. Dodge possessed a keen sense of humor. His famous epitaph on Hillman, Swain, and Dewes is too well known to need repetition.* He lived to a good old age, honored and respected by all who knew him. His death occurred at the home of his daughter, Mrs. Chalmers Glenn, in Rockingham County, on the 24th day of February, 1880.

MARSHALS

Having given brief sketches of those who served the Court in the office of Clerk, I now turn to the Marshals. When the Court was first organized, the Sheriff of Wake County acted in that capacity. Chapter 136 of the Laws of 1819 compensated the sheriff for these services. The separate office of Marshal was created by chapter 15 of the Laws of 1840-41, ratified on the 11th day of January, 1841, and I shall now have something to say of the four gentlemen who formerly held this office.

JOHN TODD COCKE WIATT, Marshal

The first Marshal of the Supreme Court was COLONEL JOHN T. C. WIATT, a native of Virginia, who had been a resident of Raleigh for many years. He had figured as an officer in the War of 1812-15, and later was a well-known citizen of Wake County.

He evinced a strong interest in military matters throughout his entire life. He was captain of a company of infantry in Raleigh prior to the outbreak of the War of 1812-15. His command was mustered into the service of the United States in that war as the "Seventh Company, detached from the Wake Regiment." This company (numbering 70 men) formed a part of the Fourth North Carolina Regiment of which Richard Atkinson was Colonel, or "Lieutenant-Colonel Commandant"; Simpson Shaw, First Major; and Benjamin Elliott, Second Major. The regiment was made up in 1812, at the beginning of the war. In his 1892 Centennial Address on the City of Raleigh, the Hon. Kemp P. Battle,

*See Wheeler's *History of North Carolina*, Part I, p. 108.

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LL.D., refers to Captain Wiatt's war record and subsequent career in these words: "The leader of the Raleigh Volunteers, Captain J. T. C. Wiatt, afterwards Colonel Wiatt, was a remarkable man; and if he had had an opportunity would have become eminent as a partisan officer. He had nerves of steel. When Sheriff of Wake,* his name became famous throughout the State because of his killing a prisoner named Wolfe. Wolfe was a man of great physical strength. He came to Raleigh as a recruiting officer, married, and settled here. He adopted gambling as a business, was arrested under the vagrant act, and committed to Wiatt's custody. Wiatt ordered the jailer, Miller, to change his quarters to the dungeon, as he was fearful of an escape. Wolfe knocked Miller down and was rushing for the door, when Wiatt shot and killed him. His action was decided to be justifiable. In 1841 the Supreme Court of the State made him its Marshal, in which capacity he acted until his death."

By a reorganization of the North Carolina Militia, which took place during the War of 1812-15, the troops of Wake County were divided into the First Regiment (containing 756 officers and men) and the Second Regiment (containing 732 officers and men). Of the former regiment, Captain Wiatt became First Major; and the command of it devolved upon him, as senior officer, when Colonel Rogers resigned early in 1815. In the same year, Major Wiatt was promoted to the rank of Colonel, and retained command of the First Wake Regiment for some time.

After the war, Colonel Wiatt set up an establishment for the manufacture of coaches and other vehicles, on his lot west of the courthouse. Under date of November 29, 1815, he makes announcement of this business through the Raleigh papers. In the same card he thanks the public for past favors, so he may have been engaged in a similar line of work before. Several years thereafter (March 15, 1818) an advertisement of like nature was made by him and his brother under the firm name of Haute C. Wiatt & Company. At a somewhat later date, he gave up this business and became a planter.

Colonel Wiatt belonged to the Masonic fraternity, and was a member of Hiram Lodge, No. 40, in the city of Raleigh. After filling several lesser stations in his lodge he became Worshipful Master in 1815, hold-

*Colonel Wiatt was Deputy Sheriff for a while. I can find no record of his having been Sheriff.—M. DEL. H.

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ing that post for five terms, his service ending in 1819. He was also, at a little later time, one of the Grand Stewards of the Grand Lodge; and he became Grand Tiler about the year 1824, holding the two offices jointly until December 26, 1827. On the date last given, Richard W. Ashton became Grand Tiler, and Wiatt was continued in the office of Grand Steward until 1837. He retained his membership in Hiram Lodge up to the time of his death.

Notwithstanding his high rank in Masonry, it must be confessed that Colonel Wiatt profited little by the ancient precept of the Order, with respect to profanity, which the Fraternity so constantly endeavors to inculcate into the hearts of all members, for he was indeed "full of strange oaths," and bore too close a resemblance to soldiers of old, in the army which "swore terribly in Flanders." Yet withal, he was of a generous and obliging disposition, who took pleasure in contributing to the welfare and comfort of those in need of assistance, especially persons passing on the much traveled highway which led by his country home. Long before the poet voiced the sentiment in words, it was his delight to

"Live in a house by the side of the road
And be a friend to man."

By the fence dividing his front yard from the public highway, he had a well dug, and equipped it with a rope, on each end of which was a bucket, one swinging inward for his family's use, and one swinging outward for the use of any thirsty wayfarer who might stop to refresh himself or his horse before continuing his journey. In the aforementioned 1892 Centennial Address on the City of Raleigh, Dr. Battle says: "Old-time travelers remember the cool water of his well four miles west of town on the road to Chapel Hill and Hillsboro. The drivers of the public stages always watered their horses at Wiatt's well."

In connection with this well, an amusing tradition survives. On one occasion, several gay young students from the University of North Carolina were traveling the road between Chapel Hill and Raleigh. While stopping for water at this well, one of them occupied his time by teasing a chained bulldog belonging to the colonel. The owner finally became annoyed, and called out: "If ~~you~~ don't let that dog alone, I'll turn him loose on you." To this threat came the defiant reply: "Turn him loose, and I'll fight him fair." The dog was accordingly released, and was

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met halfway by the student, who vaulted over the fence into the yard, whip in hand, and showered blow after blow upon the fierce animal, the strokes being accompanied by such a torrent of profanity as had never before been heard in North Carolina since the days of George Burrington. Colonel Wiatt watched the combat with amused interest, and finally saw his dog, with tail stuck between his legs, hastily seeking refuge under an outhouse. Thereupon he went forward and warmly congratulated the victor, remarking: "You have done two things that nobody else ever did—you have made my bulldog run from you; and you have shown me that there is one man in North Carolina who can swear louder and longer than I can. The world is likely to hear from you before it gets much older." After a lapse of some years, Colonel Wiatt happened to be in Raleigh one day, when a friend, accompanied by another gentleman, called to him and said he wished to introduce his companion, a clergyman of North Carolina birth, who had been absent from the State for some years, and had stopped in Raleigh to renew an acquaintance with some of his old friends. Upon recognizing the minister as the hero of the bulldog encounter in former years, and as the one whose proficiency in profanity had excited his wonderment (if not envy), Colonel Wiatt remarked: "I once had the pleasure of hearing this gentleman talk, but he was not then preaching the Gospel—according to my recollection." He then related the incident, much to the amusement of several gentlemen who had joined the group, the minister entering heartily into the laugh which followed. On taking leave, Colonel Wiatt declared that he would avail himself of the first opportunity to listen to a sermon by his young friend, as he was confident that no man with such fluency in expressing himself could fail to be entertaining as a preacher. Not many months later, the clergyman was called to the pastorate of one of the principal churches of Raleigh, and became an honored resident of the city, but Colonel Wiatt died just before his arrival.

Colonel Wiatt married Cecelia Dabney, and has quite a number of descendants residing in Raleigh and Louisburg—members of the Foster and Yarborough families. He died at his home near Raleigh, February 23, 1855, and was buried with Masonic honors.

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*JAMES LITCHFORD, Marshal

JAMES LITCHFORD, of Raleigh, was the second Marshal of the Supreme Court, succeeding Colonel Wiatt in that office. He was born in or near the old colonial capital of Williamsburg, Virginia, in the year 1795. His father, Arthur Litchford, was a pensioner of the United States Government for services rendered during the War of the Revolution.

When the War of 1812-15 came on, young James Litchford was as ready to fight for American rights as his father had been in the "Days of '76," and he enlisted in the Sixth Regiment of Virginia Infantry. His company commander was Captain Edward Pescud, who has many descendants now living in North Carolina. What were the details of Mr. Litchford's services we are unable to state; but as the militia of Virginia and adjacent States was kept busy defending the seacoast around Norfolk from depredations of the military and naval forces brought over by Admiral Cockburn, we may assume that young Litchford had a full share of active service.

In 1818, Mr. Litchford was united in marriage with Mary Archer Gill, of James City County, Virginia. About the same time he decided to remove to the town of Halifax, North Carolina, but remained there only a short time, and came to Raleigh in 1820. He was a citizen of Raleigh for the remainder of his life, being for many years associated in business with his kinsman, James Selby.

Mr. Litchford was a member of the Masonic fraternity. He took his degrees in Hiram Lodge, No. 40, in 1828, but withdrew shortly thereafter. He resumed his membership later in life, however, and continued a member of Hiram Lodge up to the time of his death.

It was in February, 1855, that Mr. Litchford succeeded Colonel Wiatt as Marshal of the Supreme Court. The Court was then composed of Chief Justice Frederick Nash and Associate Justices Richmond M. Pearson (later Chief Justice), and William H. Battle.

Mr. Litchford held the office of Marshal up to 1869, when the Supreme Court was reorganized under a provision of the new State Constitution, placing the election of Supreme Court Justices in the hands of the people, instead of their being chosen by the Legislature, as was theretofore the usage.

*This article is reproduced from a sketch of Mr. Litchford which I wrote for the *News and Observer*, September 23, 1918, giving an account of his portrait which had been presented to the Supreme Court Library by Henry E. Litchford.—M. DEL. H.

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Mr. Litchford died on the 1st day of September, 1870, at the age of seventy-five. In alluding to his death, the *Raleigh Sentinel*, in its issue of September 3d, said, in part:

"Mr. Litchford was a native of James City County, Virginia, removed to Raleigh in 1820, and has been a resident of the city for nearly fifty years. He was a most excellent citizen, quiet yet strongly marked in his principles, and an honest man. As a husband, father, and friend, we have known none better. His death is universally regretted."

The funeral of Mr. Litchford was held from the Baptist Church on the morning of September 3d, and he was buried with Masonic honors by Hiram Lodge, No. 40, a number of members of William G. Hill Lodge, No. 218, being also in attendance.

Mr. Litchford left a number of children, one of his sons being the late James J. Litchford, a well-known and highly esteemed citizen of Raleigh. Among the children of the latter is Henry E. Litchford, formerly cashier of the Citizens National Bank, of Raleigh, and now vice-president and treasurer of the Old Dominion Trust Company, of Richmond, Virginia.

DAVID ALEXANDER WICKER, Marshal

DAVID A. WICKER became Marshal of the Supreme Court, as successor to Mr. Litchford, on January 12, 1869. This gentleman was a native of Moore County, North Carolina, and the date of his birth was February 6, 1824. In early manhood he came to Raleigh, and was employed as salesman in a clothing store. He did not engage in this occupation long, however, but removed to Arkansas, and remained there about five years. In Arkansas he was engaged in mercantile pursuits, and was postmaster of the town where he was located. Returning to North Carolina, he engaged in railroading, and became General Freight Agent of the North Carolina Railroad, now a part of the Southern Railway. He lived in Greensboro during a part of the war, there being an enrolled member of the Home Guard, and returned to Raleigh in 1865, upon being appointed Traffic Manager of the old Raleigh and Gaston Railroad, now a part of the Seaboard Air Line System. The office last mentioned included the superintendence of the southern division of the Old Dominion Steamship Line, plying between Norfolk and New York. On one occasion, while on a tour of inspection over this line, his ship

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was totally destroyed by fire, and he came near perishing in an open boat which was buffeted by the waves for two days before reaching Norfolk. For a while Mr. Wicker held a responsible position with the Southern Express Company.

As already stated, Mr. Wicker became Marshal of the Supreme Court in January, 1869. He was in the service of the Court for a little over ten years, being succeeded in 1879 by Mr. Bradley.

After his retirement from the post of Marshal, Mr. Wicker exercised the duties of a magistrate for some years. A veteran of the Raleigh Bar recently told me that the lawyers of that day enjoyed practicing before him on account of the intelligence, impartiality, and promptitude with which he transacted business.

In 1845, Mr. Wicker was united in marriage with Miss Emma Jane Williams, a daughter of the late Mark M. Williams, of Raleigh. He was the father of eleven children, all of whom are now dead except Robert D. Wicker and Mrs. John R. Upchurch, of Raleigh, and Claude A. Wicker, of Durham. A grandson, Edgar J. Wicker, of Raleigh, received a license to practice law at the last term of this Court. Nor, while mentioning grandchildren, should we fail to record the name of our diminutive friend, Pearson Upchurch, whose labors in manipulating the elevators in this building have proved a great convenience to the Bench, Bar, and general public.

Mr. Wicker died in Raleigh on the 23d of January, 1890. In recording his death, the *News and Observer* said: "Mr. Wicker had held many prominent places of trust, in all of which he did his duties well. Socially he was jovial and companionable, and had many friends and few enemies wherever he was known."

ROBERT HENRY BRADLEY, Marshal and Librarian

The fourth Marshal, and the first person to hold the joint office of Marshal and Librarian, was ROBERT H. BRADLEY, whose long and honorable service to this Court and the legal profession in general was terminated by the hand of death less than a year ago, when the days of his life had far exceeded the measurement of threescore years and ten.

Mr. Bradley was born in the good old county of Edgecombe, on the 23d day of August, 1840. He was reared on his father's plantation, enjoying such educational advantages as the neighborhood afforded and

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industriously aiding in carrying on the work incident to a life in the country. On the outbreak of the War between the States, he enlisted (April 18, 1861) in Company A, of what was then known as the First North Carolina Regiment, but which was later placed between the Eleventh and Twelfth Regiments and designated the "Bethel Regiment." This regiment was then commanded by Colonel D. H. Hill, later a Lieutenant-General, and the company in which Mr. Bradley served was under the command of Captain John L. Bridgers, of Edgecombe County, later Lieutenant-Colonel. After undergoing a course of military training in Raleigh, Mr. Bradley marched with his command to Virginia and was present at the Battle of Bethel. There he was one of the party which volunteered to burn a house which obstructed the fire of the Confederates. In the execution of this design, Henry Lawson Wyatt was killed, being the first Confederate soldier to lose his life in line of battle. After the expiration of Mr. Bradley's enlistment of six months, he was employed as an express messenger on one of the railroads, and served in that capacity for some time. It was then that he decided to make Raleigh his home. Soon after the war, he was appointed Keeper of the Capitol. Later he engaged in mercantile life, and was in a fair way to succeed well in business, when his entire stock of goods was destroyed by fire in 1879. Soon after this misfortune, and in the same year, he was elected Marshal of the Supreme Court. So acceptable were his services that he was later given additional duties and compensation by authority of chapter 100 of the Public Laws of 1883, being thereafter designated Marshal and Librarian. Then it was that his great life-work as a law librarian began, and it must be said that he had a poor subject to start with, for the collection of books—never large, at best, up to that time—had been mismanaged, plundered, and scattered to such an extent that there was not even a full set of the North Carolina Reports in the whole Library. Beginning in the cramped quarters of the Capitol, where the Court then held its sessions, he gathered and classified the collection. In 1886 the Library had grown to such an extent that it was moved to larger quarters in a new building, and finally was brought to its present location.

Though I knew Mr. Bradley intimately for many years of his life, I never fully realized until I became his Assistant, seven months before his death, the full measure of fortitude under pain and devotion to duty which characterized his life. Often, in his last days, when I

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saw him racked by pain and weakness, I urged him to go home and rest for an afternoon, but his invariable reply was that he had worked in the Library for so many years that to be anywhere else during office hours made him feel ill at ease and out of place. He performed his duties to the last, and found peace in death on the 17th of May, 1918.

Mr. Bradley was twice married and left four children. His first wife was Miss Harriet King, of Wake County. After her death, he married her cousin, Miss Cynthia A. King. This lady survives him.

Mr. Bradley was a Baptist, and served as a deacon in the Tabernacle Baptist Church, of Raleigh, for many years before his death. For over fifty years he was an active Mason, and held many honors in the various branches of that Fraternity. I feel safe in saying that he was, without exception, the most widely known member of the Order in North Carolina.

To the members of the Bar here present, it is needless to speak of Mr. Bradley's obliging disposition. He served them long and well, and his memory will abide with them for many years to come.

PRESIDENT AYDLETT: The response to the able addresses which we have enjoyed will be made by the great and distinguished Chief Justice of our Supreme Court, Hon. Walter Clark, of Raleigh.

RESPONSE TO ADDRESSES

By CHIEF JUSTICE CLARK.

"We take no note of time, but from its loss. To give it then a tongue is wise in man."

The tick of the clock tells us that another moment has joined the past eternity. We see by the hand on the dial-plate that another hour has passed. When the sun in supernal splendor sets along the gorgeous west, we know that another day is done. When "seed-time and harvest and summer and winter" have gone by, we know that another year has fled. But neither sight nor sound nor sensation suggests to us that with stately steppings a century has swept by. We only know it from reading the record. We stand today in the presence of history.

The admirable and instructive address of Judge Winston tells us of the progress made by the Court and the changes in the laws, whether by decision or by statute, in the last hundred years. Mr. Hicks has grace-



FRANK NASH
Chairman



ROBERT H. SYKES
Secretary



HERBERT F. SEAWELL



J. W. PLESS



GEORGE V. COWPER



JOHN A. MCRAE

EXECUTIVE COMMITTEE NORTH CAROLINA BAR
ASSOCIATION, A. D. 1919

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fully foretold, as far as any man can foretell, somewhat of the changes we may expect in the next one hundred years.

Mr. Haywood has given us a very interesting account of the inside history of the Court, as shown in the lives of its clerks and marshals.

The Court held its first session one hundred years ago tomorrow, so today closes its century. In more senses than one, that period has been equally divided. During the first fifty years, from November, 1818, to 1868, the judges were elected by the General Assembly and were chosen for life. During the last fifty years the judges have been chosen at the ballot-box and their tenure has been for a term of years.

During the first fifty years of this Court it lived under the practice and procedure formulated in feudal ages by the judges, who for the most part were not lawyers, but priests of the Catholic Church or laymen. The law and procedure created by them was called the common law, as distinguished from the feudal law administered by the barons in their local courts, who hanged or fined or imprisoned their followers, and decided disputes as to civil matters, according to their good pleasure.

As a consequence, during the first fifty years of this Court, it administered the law according to the views of a ruder age. During that half a hundred years the greatest and most powerful interest in the State was slavery, and the condition of women was little short of it, for upon marriage their property became that of the husband, and he still retained the right to chastise his wife at will, without power in the courts to hinder him, provided he used "a switch no larger than his thumb." Judge Little so instructed the jury as late as *S. v. Rhodes*, 61 N. C., 453, at Fall Term, 1867; and Judge Reade, speaking for a unanimous Court, said there was no error, and that the courts could not punish the husband even though the whipping had been inflicted without any provocation. If the negro was a slave, the wives of white men also had only the legal status of a chattel.

In 1868, at the middle of the Court's century, the negro was admitted to a share in the government because emancipated from the master's lash. But not till 1874 did the Court, in *S. v. Oliver*, 70 N. C., 60, recognize that even the courts must bow to the spirit of the age, and emancipated the wife from the husband's whip.

In 1868 both the Federal and the State Constitution admitted the former slaves to a share in the government. It will be a mystery to coming generations that another half-century has passed and we are now only

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on the eve of admitting that the mothers, wives, sisters, and daughters of the voters of North Carolina are as competent as our former slaves to share in the government. During this half-century, so far as political recognition is concerned, they have remained disfranchised in the same class with convicts, lunatics, idiots, infants, and illiterates. We cannot say that the admission of the negroes to the ballot-box by the Fifteenth Amendment was entirely forced upon this State, for among the members of the North Carolina Legislature who voted to ratify the amendment conferring suffrage upon our former slaves the record shows the names of Thomas J. Jarvis, James L. Robinson, Edward W. Pou, and other leaders of like character.

In the recent election in England the vote of the women was conservative, and so it will be here, for such is their nature. Their vote will be needed. It will always be cast for the home and its best interests.

Though the Constitution of 1868 did not admit the women of the State to a share in the government which was granted to the former slaves, it did not disqualify them from holding office,* and it did expressly confer upon married women the ownership of their property inherited or in whatever manner acquired, "as fully as if they had remained unmarried," with the single requirement of the written assent of the husband to a conveyance of realty. But such was the force of precedent and preconceived opinions that the judges, who had been educated under the feudal ideas as to the incapacity of women to manage property, blandly continued to hold that wives were not only incapable to contract, but that their husbands could recover their earnings from their personal labors, and for mental and physical anguish sustained by them from personal injuries, and continued to assimilate their condition, as far as possible, to the old feudal conditions until by act of the General Assembly married women have at last been partly, but not yet entirely, vested with the rights granted them by the Constitution.

The Constitution of 1868 also emancipated the law from those fetters of form which made one of the greatest reproaches of the system we had inherited from the judges who formulated the common-law practice. The Constitution of 1868 absolutely abolished all distinction in the forms of action, and even divorced us from the fetish that there was an inherent and insurmountable distinction between law and equity.

*It merely provided that "Every voter" (meaning merely to include the newly enfranchised negro) should be eligible to office. Cons., Art. VI, sec. 7.

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Under the system in force when this Court was formed, a hundred years ago, it was esteemed a crime for a man to become unfortunate financially, and he was accordingly imprisoned if he could not pay his debts. One of the most distinguished judges who ever sat upon this Court, a leader in thought, and one of the originators of our common-school system, and the pioneer of internal improvements, was imprisoned for months in Guilford jail at Greensboro because he was unable to meet his financial obligations—Judge Archibald D. Murphey; and Robert Morris, who financed the patriot cause in our Revolution, languished for years in jail for debt thereafter. We have certainly traveled far from that in these one hundred years.

More than that, we established in 1868 a system that was shocking to the reactionary shylocks, to whom the dollar was infinitely more precious than the liberty of the citizen, by creating “a homestead and personal property exemption” for the unfortunate debtor. He would be a rash man now who would attempt to repeal it. The world has moved in the last fifty years. We have not only emancipated the slave, given property rights to the women, and are about to give them also a share in the government, but we have freed the debtor.

The pages of our Reports show that we have not halted with these reforms, but we have set out upon a course that is to emancipate the children by giving them education in the public schools and by limiting the years within which they can be harnessed down to labor, and we are giving to the creators of the wealth of the State some recognition by limiting the hours of labor. We already have destroyed the mediaeval doctrine that an employee of a common carrier could not recover for injuries inflicted in the service if a fellow-servant contributed by his negligence in causing it.

More than that, in the last hundred years we have emancipated the people, or, rather, they have emancipated themselves, by making all officials elective, from constable to governor. Under the Constitution of 1776, enacted at Halifax, the people were trusted to elect only the members of the Lower House, just as the Constitution at Philadelphia eleven years later, entrusted to the people the election only of members of the House of Representatives. The magistrates were elected by the Legislature, and the magistrates elected the county officers, except the clerk, who was appointed by the judge. Sixty years passed before we began

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to trust the people to elect their own agents by making the Governor elective. Twenty more years elapsed before we allowed the State Senators to be so chosen. Up to that time it was thought unsafe to permit any man to vote for State Senator unless he owned fifty acres of land. The judges and all the State officers, except the Governor, continued to be elected by the Legislature until half the century of this Court had expired, in 1868, and property qualifications were required for offices. Further, the Constitution held a man unfit to be Governor unless he owned a freehold above a thousand pounds in value, nor fit to be a State Senator unless he owned three hundred acres of land. They intended to admit no Bolshevist into office. It is still held by this Court that women cannot hold any office or place under the State, but they in fact do hold several, and there is no disqualification of women to hold office to be found in the Constitution or in any statute.

Numerous instances in which our State laws and decisions have been modernized have been stated by Judge Winston. It is hard for us to realize that the Constitution of the United States today is the oldest form of government in any civilized country. The only governments which have not been modernized since ours was created are the autocracy of the barbarous tribes in Central Africa and in the Pacific Islands. In no country today except ours is the Executive permitted to interfere with legislation by the representatives of the people by interposing his veto. This remnant of distrust of the capacity of the people for self-government has disappeared in every country save this. North Carolina in this particular stands ahead of all her sister States, for it is the only one which so far has refused to confer the veto power upon the Governor. Then, too, government in this country is the only one in which the Judiciary exercises, or has exercised, the veto power over the Legislative Department. This, however, is not conferred by the Constitution, either Federal or State, but is an assumption of authority by the ruling of the Court in its own favor in *Marbury v. Madison* in 1803. It was created by an ingenious process of reasoning in the *obiter dictum* in that case and, it is believed, as a bulwark for the protection of slavery against possible hostile legislation. Certainly it was never used against an act of Congress until (in another *obiter dictum*) in the *Dred Scott* case in 1857, which hastened the Civil War. After that war, aggregated wealth invoked instead the Fourteenth Amendment, enacted for the

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totally different purpose of protecting the newly emancipated negro, which it never did.

The assertion of the judicial veto in *Marbury's case* was promptly denied by President Jefferson, the leader of one great party, and later by Abraham Lincoln, the leader of the other. Its adoption was most unfortunate for the courts. To quote an expression of Talleyrand, "It was worse than a crime; it was a blunder." It has made the composition of the courts ever since a matter of prime importance to aggregated wealth wherever judges are appointive. This Court extended it in *Hoke v. Henderson*, 15 N. C., 1, but this lead was not followed by any other State, and the soundness of the decision was denied by the U. S. Supreme Court. It remained a cause of friction between the legislative and the judicial department of the State government for seventy years until (after having been affirmed sixty times) it was overruled by *Mial v. Ellington*, 134 N. C., 131, in 1903.

Among the many excellencies of the law schools in this country there is one great defect which has been cured in but few of them, and that is the history of the law is not taught. Not only are students, as a rule, and therefore lawyers, uninformed as to the development of our State law so admirably traced by Judge Winston in his address, but they are misinformed as to the origin and development of the law in England. From the charming narrative of Blackstone, students have conceived an admiration of the so-called common law, which he tells us is the "perfection of reason," whereas though it may have been the best that could have been done by the judges who created it in a barbarous age, our progress consists in changing it in every way possible. So far from its origin being "as undiscoverable as the sources of the Nile," we know that it was simply "judge-made law."

In our training as lawyers we also received an entire misconception of Magna Carta, which was a reactionary instrument exacted by the barons to secure their local and personal privileges (among them was the right of hanging their retainers at will) against the extension of the jurisdiction of the King's Courts which had been created by the father of King John. Even so great an authority as the Supreme Court of the United States ought to be stated on one occasion that trial by jury was guaranteed by Magna Carta, and one writer has even said that it was "drawn by the great lawyers of England." The truth is, as we now

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know, that when Magna Carta was signed in 1215 there were no lawyers in England of any kind, but every person in any proceeding, civil or criminal, was required to appear in his own behalf. It was twenty-one years later, by the Statute of Merton in 1236, that authority was first given one to appear in court by a friend or agent to plead for him. It was not till seventy-six years after the Magna Carta that the Statute of Edward I. in 1291 gave authority for lawyers to act as professional agents for litigants or defendants and authorized forty lawyers to be licensed for all England. The judges up to that time were priests, with now and then a layman, and for centuries later continued to be mostly such. There was no law school in England by which lawyers could be educated professionally until 1758, nearly five centuries and a half after Magna Carta, when a briefless barrister who had failed at the bar was enabled by the gift of a layman to open the first law school in England at Oxford. His lectures have become famous as Blackstone's Commentaries. During all the centuries from 1291 till then, lawyers had prepared themselves by being articleed as clerks to practicing lawyers, or picking up such crumbs of information as they could by attending the courts. The Inns of Court were not law schools but voluntary associations of law students.

As to trial by jury, there was none in England until 1351, one hundred and thirty-six years after Magna Carta, and the first juries were composed of the witnesses, who were to find the facts by reconciling their testimony. Hence juries were not at first always composed of twelve men, nor for a long time was unanimity required. It must be remembered, also, that during all the centuries from the Conquest down to Blackstone's day the records of the court were kept in dog latin, and for most of that time the opinions of the judges and the arguments of counsel were in Norman-French, which might well be styled pigeon-English. To add to the uncertainty, the opinions of the English judges, with rare exceptions, when the Court entered "*curia vult advisari*," were rendered hot foot, at the hearing, and there were no reasons given in writing. The reporters until very recently were never official, but always volunteers and subject to no revision. The records show that they frequently misconceived the reasons given by the Judges. The result is that many Reports have been justly characterized as almost valueless, and comparatively few can be depended upon as at all accurate. Reports of opinions

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delivered orally, at the close of the argument, and in Norman-French, taken down by volunteer and often incompetent reporters, were naturally often misconceptions of what was said and done. The recent publication of the researches of Professor Vinogradoff and others in the archives of the courts are conclusive on this subject. It could not be otherwise when all the elements of uncertainty are considered. No wonder that with the misconceptions borne in on the profession by the teaching of Coke and Blackstone our courts became so much at conflict with the spirit of freedom and liberty that it has required constitutional amendments and so many statutes to make the necessary changes.

That the changes in the next hundred years will be greater still is inevitable. Even the foresight of Mr. Hicks cannot conceive them. Not only have the Constitutions of all countries been created or changed since that of the United States was adopted, but the method of changing them is different. In France and Germany, Italy and Spain, and other countries, when an amendment to the constitution is desired, it is not made in the cumbersome way we adopted in 1787—out of fear to trust the newly emancipated people, who were then mostly uneducated—but in those countries and in probably all others except England a joint session of the two Houses of the lawmaking body is held and the amendment is then made by a majority vote. In England it is not even necessary to have a joint session of the two Houses, but when a bill has passed three times through the Lower House in two consecutive sessions of Parliament it becomes a part of the constitution without the assent of the other House. How soon we shall reach this stage of progress in civilization we cannot tell. We only know that so far we have essentially changed the method of electing the Senate and cured by amendment some errors of the courts.

There is, as I have said, no veto in any country but ours, either by the executive or by the courts, upon any legislation. It is very certain that the judicial veto upon legislation cannot much longer survive the discussion which has arisen over it in the absence of any provision in the Constitution or law conferring that power upon the courts. This power which the reactionary interests cling to as their last bulwark to stay progress and the extension of equal rights of all to share in the benefits of increasing wealth and of the comforts and opportunities of civilization will be as futile a barrier for them as to "attempt to dam the Nile with

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bulrushes." At present the Court has created itself a Privy Council by its own enactment, with the power to nullify the vote of the two Houses, though approved by the President or Governor.

In our own State it would seem quite clear that among early changes will be the abolition of the antiquated system of rotating the trial judges, each of whom, selected by one district, can yet preside over the other nineteen, whose people have had no part in his nomination. Another change which would seem extremely probable is to give force and effect to section 8 of Article I of our Constitution, which provides, "The legislative, executive, and supreme judicial powers of the government ought to be forever separate and distinct from each other." We know that, under the influence of former ideas, this paragraph and requirement is an absolute nullity.

The legislative is not separate and distinct, but is subject to the power of the judiciary to negative and destroy legislation, the only requirement being some ingenuity or skill in holding that a given feature of any act is not "due process of law," or not "according to the law of the land," or "not the equal protection of the laws," or some other reason "equally as good."

On the other hand, the judiciary has not control of its own department, for its procedure is prescribed or changed at will by the interference of the Legislature. In New York, where they first formulated the new and simpler code of procedure drawn up by David Dudley Field in some 391 sections, it became the custom for every lawyer who lost a cause to rush to the Legislature to amend the procedure, so that today they have a code of more than 3,000 sections which is more complex and complicated than the absurd system which it was intended to succeed. In England they have proceeded according to the spirit of the provision in our Constitution (and the United States Congress, to a certain extent, is proposing to do the same) by authorizing the highest Court to formulate the procedure by rules of practice. In England the court has done this in sixty-three sections.

Not only are the courts thus interfered with by legislation in their procedure and practice, matters which pertain to the Court, but the Executive interferes with matters strictly judicial, by ordering special terms, or the exchange of circuits, and by the use of the pardoning power, and in other ways. There should be either a bureau of justice,

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or the Court itself should be authorized to discharge these matters of which the judiciary are better informed, instead of relegating them to Executive action, which is foreign to such duties.

When these and some other changes are made each department will be separate and distinct, but not till then. At present there is hopeless interference by each of the three departments with the other two.

It is probable that in the future the anomaly of Federal judges being appointed, instead of elected by the people, and holding for life, which is unrepresentative and autocratic, will be abolished. It is also probable that many of the grounds of jurisdiction in the Federal court, such as diversity of citizenship, shall be abolished, or else the spectacle of two concurrent jurisdictions, the Federal and the State courts revolving in the same orbit, will disappear by there being only one system of courts with appeals, instead of writ of error, from State courts to the United States Supreme Court, or at least there will be an abolition of Federal courts except for purposes of executing the law in purely Federal matters not involving questions of private right.

There will be still greater changes, which no man can prophecy, in law and its administration which will have been realized one hundred years hence.

Mr. Hicks mentions the suggestion of Hugo Munsternburg that some psychologist may invent a machine to tell when a man is lying. It would greatly shorten trials. A defendant, preparing to take the stand as a witness, asked his counsel, in some trepidation, if he thought this possible. His counsel said: "Huh, of course. I married one."

The English-speaking people are the only ones where recorded decisions are taken or have ever been held as authority. Everywhere else each case is decided as it arises upon its own merits, unbiased by what other judges in other cases have said. In 1890 the volumes of Reports in English had already reached 8,000. Today there are nearly 35,000 volumes of Reports. This system is breaking down of its own weight. It cannot go on. Shall we substitute for it the system prevailing in other countries of not printing or quoting the decisions, and having instead codification similar to the Code Napoleon? If not, what shall we do? If an opinion or decision is erroneous, duplication and reduplication will not make it sound.

Great, as it seems to us, has been the change in laws and their admin-

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istration in the one hundred years that have passed since this Court was created, it has been exceedingly small as compared with the progress in every other department of thought and of action. A hundred years ago steam railroads were undreamed of, and the transmission of intelligence by electricity. Telephones, phonographs, ocean cables, wireless telegraphy and navigation of the air and other discoveries and inventions are so recent as still to be novelties. The human mind cannot foresee "all the wonders that shall be" in the next hundred years. A hundred years ago anesthetics were unknown and amputations were made without chloroform or ether. Even now antisepsis and sanitation are new. The progress in religious conceptions from the then still recent execution of witches, against abolition of which Blackstone protested, to these days when religion approximates somewhat nearer to the teachings of the Master, in the establishment of the Red Cross and of hospitals, freedom from work for children, the extension to them of education at the public expense, greater consideration for the poor and the recognition of the rights of women, as well as of inferior races, has taken the concrete form of governmental adoption. The battle of the Marne, besides its other results, will obtain the guarantee by the nations of the world of the protection of an historic race throughout Russia, Germany, Austria, and Turkey from a persecution which began on the day when "Mordecai the Jew sat in the king's gate," and at a woman's bidding salvation came in the order of protection sent by swift couriers to the one hundred and twenty provinces.

When this Court held its first session one hundred years ago, had some one predicted that in less than half a century the people would be trusted with the election of the Judges and all other officers from Governor to constable, that the negro would be emancipated and a citizen, that women would possess property rights, and that the ancient forms of legal practice and procedure would be swept away, it would have created consternation. But not as much as would be the case if one could stand here and foretell the conditions of government and of society which will exist when the second Centennial of this Court shall be celebrated. As the astronomers, by taking note of the direction from which our planetary system drawn along by the great central orb 1,300,000 times as large as this little planet on which we live has rolled on its course with incredible speed, can tell us that the direction in which we are moving

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is towards the star Vega, which shines near the horizon to the northwest, so we can see in the great Declaration at Philadelphia in 1776, its adoption since in some form of the Rights of Man by all nations, its extension to the emancipation of subject races and the admission of women to a share in government, and still more in the limitation of the hours of labor, the minimum wage and other requirements, that we are traveling with increasing speed towards giving a greater and a more adequate share of the wealth they create to the labor that creates it. In the not distant future there will be no Rockefellers and Carnegies, no kaisers or kings, but a higher standard of living and more enjoyment of life for those who "make all things that are made and without whom nothing is made that is made." Privilege will pass. Equality of opportunity will prevail. The miter and the musket will no longer have a controlling share in government when the hammer and the level, the brain and the hand shall "rule in the realm which they have made."

If any one shall read one hundred years hence what is said here today they may find that we had at least some glimpse of the kingdom into which this generation, like the children of Israel of old, may not enter, and beyond which even in that day there will still lie an illimitable field—

"The infinite world of man's last aspirations untrod.

Save by the evening and the morn and the angels of God."

The end.

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